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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA, New York, N.Y.

5 v. 18 Cr. 0036 (JPO)

6 DAVID MIDDENDORF and JEFFREY
7 WADA,

8 Defendants.
9 -----x

10 February 14, 2019
11 Before: 9:42 a.m.

12 HON. J. PAUL OETKEN,

13 District Judge
14 and a jury

15 APPEARANCES

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18 Southern District of New York
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10 11 - also present -
12 13 Lyeson Daniel, Postal Inspector
14 Virginia Faughnan, Postal Inspector
15 Luke Urbanczyk, Government Paralegal
16 Nathaniel Cooney, Government Paralegal
17 Kiezia Girard-Lawrence, Postal Inspector
18 Stephanie O'Connor, Defendant Middendorf paralegal
19 Sarah Chojecki, Defendant Wada paralegal
20 21 22 23 24 25

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1 (Trial resumed)

2 (In the robing room present with the Court, law clerk,
3 deputy clerk and Juror No. 4)

4 JUROR: Good morning.

5 THE COURT: Good morning. So we're in the robing
6 room.

7 And you are Juror No. 4, Mr. Ferdinand Rivera?

8 JUROR: That's correct.

9 THE COURT: All right. I just wanted to follow up
10 because I understand you made a comment to Mr. Hampton about
11 your work situation, and I just wanted to follow up on that.

12 Because you -- remind me where you work?

13 JUROR: I work for Phelps Memorial Hospital in
14 Tarrytown.

15 THE COURT: Phelps?

16 JUROR: It is now under Northwell.

17 THE COURT: And is it Phelps?

18 JUROR: It is Phelps Memorial Hospital.

19 THE COURT: P-h-e-l-p-s?

20 JUROR: P-h-e-l-p-s.

21 THE COURT: What do you do for them?

22 JUROR: I work as admitting department.

23 THE COURT: Admitting department.

24 JUROR: But I'm per diem.

25 THE COURT: What does that mean?

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1 JUROR: Per diem means that I was working almost
2 full-time but they call me. So, for they to pay me, I need to
3 be scheduled, but I cannot be scheduled because to be scheduled
4 I need to be available. And if I am in jury duty, they told me
5 I'm not available before-

6 THE COURT: When did you learn this?

7 JUROR: I talked to them Friday, I believe. I talked
8 to them Monday, after -- yes, Monday after -- I told them that
9 I was going for jury duty and that I didn't know if I was going
10 to be selected. So they told me just keep us informed.

11 THE COURT: Keep us informed?

12 JUROR: Yes.

13 THE COURT: And then you spoke to them on Monday
14 and --

15 JUROR: Yes. And they -- I called into to my
16 immediate boss supervisor. And that's the way it is. You
17 know, they call me if they need my help and then I have to let
18 them know if I am available. If I am available, they confirm
19 with all the supervisors -- the front supervisors in the
20 department. And if they agree for me to go to work, I will
21 replace someone who is absent or something happened, then I am
22 scheduled.

23 THE COURT: OK. So you are not scheduled for, for
24 example, next week?

25 JUROR: No. I was scheduled only for the 21st.

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1 Usually it is the day before. But for the 21st, I believe they
2 would -- you know, they would be responsible for it.

3 THE COURT: So you think they will pay you for the
4 21st?

5 JUROR: Yes, for the 21st, yes. They didn't tell me
6 anything about it, yes.

7 THE COURT: But other than that, you are not
8 scheduled?

9 JUROR: No, I will not be scheduled. I will not be
10 called.

11 THE COURT: OK. So, as I said when we were selecting
12 the jury, this trial could well go three weeks or four weeks?

13 JUROR: Mm-hmm.

14 THE COURT: And we need all the jurors to be here from
15 Monday through Thursday, at least. So, what would that mean
16 for you?

17 JUROR: Also is that I live in Ossining. It is in
18 Westchester.

19 THE COURT: Ossining?

20 JUROR: Ossining. And when I come in and return, it
21 is peak. So it's -- I don't know how that works if it is 58
22 cents per mile, but I spend almost \$35 every day just in
23 transportation to get here.

24 THE COURT: And do you know what the jury department
25 pays you for?

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1 JUROR: I know it is 58 cents per mile. The thing is
2 I don't know if they just use one point to another one or they
3 just go straight to count the miles, or if they use the miles
4 according to the route that I will take. I mean, if you use --
5 like, for example, if it is only 30 miles, probably that
6 would -- it might cover. I'm not sure. I have not really
7 calculated it well.

8 THE COURT: OK. Then you get how much per day, did
9 they tell you?

10 JUROR: It was 50.

11 THE COURT: 50 a day?

12 JUROR: First week, first two weeks, and then it might
13 go to 60, or something like that.

14 THE CLERK: I know they got an increase but I know it
15 is \$50 per day.

16 THE COURT: We can find out about the mileage issue.
17 But, you know, basically, the reason I asked all these
18 questions at the beginning when I pick the jury is because I
19 wanted to make sure that once we start, it is very problematic
20 for the jury to lose people.

21 How much of a problem is this for you?

22 JUROR: Is there -- it is not for sure, for certain
23 that we will be off on Friday? That's -- because maybe I
24 can -- I can work on Fridays. That's what I'm trying to say.

25 THE COURT: OK. Well, we could get you -- we could --

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1 I could probably assure you, if that is what is necessary,
2 that -- this Friday is the questionable one. Tomorrow is the
3 questionable one.

4 JUROR: I know.

5 THE COURT: But next Friday and the following Friday,
6 I could probably let you off.

7 JUROR: All right.

8 THE COURT: The other thing I wanted to suggest is is
9 there anything I could do in terms of talking to your
10 supervisor or talking to anybody at work about the situation?

11 JUROR: I will talk to them. The thing is that I --
12 whenever I'm off, maybe Monday, maybe I will be able to go
13 there and talk to them, yes.

14 THE COURT: Would it help for me to talk to them?

15 JUROR: Let me find out first specifically what is
16 their thinking.

17 THE COURT: OK.

18 JUROR: And then I'll talk to Alex, back to Alex, and
19 we'll see --

20 THE COURT: Bruce.

21 JUROR: Bruce, I mean. I don't know why somebody
22 called you Alex.

23 THE COURT: He looks like an Alex.

24 JUROR: All right. I was worried because the first
25 day that I was coming in, I said, I'm know I'm getting this

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1 money but I'm not going to get paid. It isn't about the money,
2 it is that I have to be paid every day. It is almost 30,
3 almost \$38 a day. And I'm not getting any income. That is my
4 worry. I know I am going to get the \$50. Probably most of it
5 is refunded but it is at the end.

6 THE COURT: Yes, that is right.

7 JUROR: And that worries me a little bit.

8 THE COURT: OK. But do you think you will be able to
9 do it for four weeks?

10 JUROR: I hope so.

11 THE COURT: If you could work --

12 JUROR: I know that if I started it out, I have to
13 finish it. I am aware of it.

14 THE COURT: So you think you could do it?

15 JUROR: I could, yeah, I think so.

16 THE COURT: Let me just say, I am happy to talk to
17 your supervisor. If there is anything they could do about I
18 don't know if there is any flexibility in terms of, you know,
19 giving you a couple of days of pay, at least say the 21st and
20 any other day, if it would help, I would be happy to call your
21 supervisor and talk to them.

22 JUROR: I am going to talk to them first. They have a
23 policy already set up. I mean, that will not change because I
24 know that I will be paid money.

25 THE COURT: OK.

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1 JUROR: So let me talk to them first.

2 THE COURT: OK.

3 JUROR: I didn't know it was for four weeks. I was
4 counting for two weeks. I know you said it at the beginning.
5 I should have asked to come to the front, to the sidebar, and
6 say it, but I don't know. I just -- I don't know, I lost my
7 mind. I should have come forward.

8 THE COURT: It is OK. So feel free to ask me again to
9 speak to your supervisor. We'll find out the information about
10 the mileage issue.

11 How many -- where is it that you live? In Ossining?

12 JUROR: Ossining, New York.

13 THE COURT: And you take the train?

14 JUROR: Yes. And it is peak hours. It is \$3 extra,
15 and when I go back it is also as well.

16 THE COURT: So what do you end up paying to get here?

17 JUROR: It is 28 plus 5.50. It is 33.50.

18 THE COURT: OK. All right.

19 JUROR: That's where I worry a little bit. Just that
20 I will be -- I will get that refunded but it is going to be at
21 the end of the trial.

22 THE COURT: Yes.

23 THE CLERK: I'm sorry, Judge. If I could just
24 interject one second?

25 THE COURT: Yes.

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1 THE CLERK: Are you saving your receipts?

2 JUROR: I'm not saving it but I do have records
3 because I am using my credit card and I have bought them
4 through my phone, which are rail receipts. For the subway, I
5 don't have the receipt but I do have the credit card which says
6 MTA and the dates.

7 THE CLERK: OK.

8 THE COURT: OK.

9 JUROR: I didn't save them because I thought -- it
10 says it is 58 miles, so they said not to save the receipt
11 unless you were driving.

12 THE COURT: Oh, OK.

13 JUROR: That's what they say.

14 THE COURT: We'll try to find out a little more about
15 that.

16 Try to speak to your supervisors. You will be off on
17 Monday, of course, because it is Martin Luther King Day. Will
18 you be able to speak to them then?

19 JUROR: Yes.

20 THE COURT: OK. I'm not sure about this Friday, but I
21 think next Friday you should be able to sign up for work and
22 we'll just kind of go from there, if that is OK. OK?

23 JUROR: That makes sense.

24 THE COURT: OK.

25 JUROR: OK. Yes.

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1 (In open court; jury not present)

2 THE COURT: Good morning.

3 MS. MERMELSTEIN: Good morning, your Honor.

4 THE COURT: Two juror-related things.

5 First, with respect to Juror No. 16, Ms. King, after
6 we spoke last night about the idea of just calling her, I
7 realized that she actually had a security card, a court
8 security card, to get access to the jury room, and I was afraid
9 that if we just called her and released her, that we would
10 never see the jury card and that is a security issue. Instead
11 of doing that, we just waited for her to arrive this morning
12 and Mr. Hampton -- the others were in the jury room, and
13 Mr. Hampton intercepted her before she got to the jury room --
14 she was plainly late -- and just told she was excused from jury
15 service. Basically that's it. Took the jury card from her.
16 And she said, Can I say goodbye to the other jurors? And he
17 said, No.

18 So, she's out. And so I guess I would just suggest --
19 I guess Mr. Weddle's suggestion is just to say I had to excuse
20 one of the jurors, we're continuing -- I had to excuse Juror
21 No. 16, we're continuing with the trial.

22 With respect to Juror No. 4, Mr. Rivera, I don't know
23 if you saw the feed while I was in the robing room, but there
24 is a transcript of it. I inquired about his -- the fact that
25 he is paid per diem. Essentially, I need to get more

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1 information before the mileage reimbursement. He asked if he
2 could be scheduled to work on Fridays. I said probably not
3 this Friday but perhaps next Friday. And essentially he said
4 he thought he could work it out. So, you will be able to see
5 the transcript, I believe.

6 And the issue of the under-seal documents, I received
7 a couple of letters, one from Mr. Wada's counsel and one from
8 counsel to the PCAOB.

9 Does the jury have to know if it is under seal? Could
10 we just proceed without that information?

11 MS. MERMELSTEIN: Yes, your Honor. We don't propose
12 to inform the jury. We'll just offer them and then outside
13 their presence we can deal with what's under seal and what's
14 not.

15 THE COURT: OK. So what I propose to do is, because I
16 do want to look into the Lugosch issue a little bit more, we'll
17 just proceed provisionally treating them as under seal and then
18 I will address the issue later, if that is OK.

19 MR. WEDDLE: No objection.

20 THE COURT: OK. Can we bring out the jury? Starting
21 with the witness and then the jury?

22 MS. MERMELSTEIN: Your Honor, one quick -- before the
23 jury is in: Given the uncertainty of the sealing issue, would
24 it be all right with your Honor if we turned off the gallery
25 monitors so things that may end up under seal are not being

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1 broadcast into the gallery?

2 THE COURT: Is there a button --

3 MS. MERMELSTEIN: I think we have to unplug it. I
4 think it is sync'd to the attorneys' ones -- or to the jurors,
5 rather.

6 THE COURT: OK.

7 MS. MERMELSTEIN: Or can it can be turned, I suppose.

8 (Pause)

9 MR. WEDDLE: Your Honor, very briefly. I don't know
10 what the direct testimony looks like, but it may be that we
11 lose our issue if this is the resolution. Even though it is
12 temporary, it may become permanent.

13 THE CLERK: The jury is present.

14 (Continued on next page)

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1 (Jury present)

2 THE COURT: You may be seated.

3 Good morning, ladies and gentlemen.

4 JURORS: Good morning.

5 THE COURT: I hope you all had a good night.

6 Was there coffee for you this morning?

7 JURORS: Yes.

8 THE COURT: Was there enough?

9 JURORS: Yes.

10 THE COURT: OK. Good. We'll make sure we always have
11 coffee for you.

12 And you'll see I had to excuse Juror No. 16. She's
13 not going to be on the trial anymore. No reason you have to be
14 concerned about that.

15 We'll now continue with testimony in the trial.

16 And, Ms. Mermelstein, you may proceed.

17 MS. MERMELSTEIN: Thank you.

18 Your Honor, could you remind the witness that she is
19 under oath?

20 THE COURT: Yes.

21 You are still under oath. You were sworn in
22 yesterday. You remain under oath.

23 And you may proceed.

24 STEPHANIE RODRIGUEZ,

25 called as a witness by the government,

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1 having been duly previously sworn, resumed and
2 testified further as follows:

3 DIRECT EXAMINATION

4 BY MS. MERMELSTEIN:

5 Q. So I think where we left off, Ms. Rodriguez, last night,
6 you were discussing Government Exhibit 224, in evidence.

7 Could we pull that up for everyone.

8 And can you remind the jury generally what Government
9 Exhibit 224 was?

10 A. Yes. This is the email communication sent out to the
11 inspection team members, which is providing us the planning
12 memorandum, which will have the instructions for our
13 inspections in that year.

14 Q. Let me ask you -- direct your attention to the first
15 sentence of the email, and ask you to read it out loud?

16 A. "Attached please find the 2016 GNF inspection planning
17 memorandum template. There are a few items that I'd like to
18 highlight."

19 Q. And then let me direct your attention to the second bullet
20 point of the email. Let me ask you to read that.

21 A. "There will be an inspection focus on going concern and
22 segment reporting in 2016. There will not be an inspection
23 focus on the statement of cash flows."

24 Q. Did the GNF-wide planning directives often include
25 direction into particular areas that would be focuses across

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1 the GNF program?

2 A. Yes, they did.

3 Q. Where did those focus areas come from?

4 A. You know, there are different reasons for focus areas in
5 any given year. Sometimes they are our standard setting group
6 that is interested in adoption of a new principle or a certain
7 area that they find -- you know, there is some feedback that is
8 confusing and they are debating whether to provide additional
9 guidance. There could be areas where we see historical
10 findings that we're trying to understand the cause of them.
11 There is a number of different reasons that we will develop
12 these focus areas.

13 Q. Are do these focus areas ever come from outside entities
14 outside the PCAOB?

15 A. I believe so, yes. It's my understanding.

16 Q. Like what?

17 A. The SEC at times will gather information for them, areas
18 that we know are of interest to them; we will gather
19 information.

20 Q. Let me direct your attention to the second-to-last bullet
21 point, and let me ask you to read that, please?

22 A. "There are no significant changes to the issuer selection
23 strategy except you will not be required to select 2 mutual
24 funds. For the 'random selections,' ORA has incorporated a
25 random number generator directly in the engagement profile.

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1 The tool will select directly from the issuer listing in the
2 planning profile based on set criteria."

3 Q. With respect to the reference to not being required to
4 choose two mutual funds, was it common for the GNF-wide
5 planning to include a directive that a particular number of
6 some kind or the other of issuer be selected?

7 A. Yes. They often provide numbers for selection or ranges
8 for selection.

9 Q. There is a reference here to, quote, random selections?

10 A. Mm-hmm.

11 Q. What is that in reference to?

12 A. In every inspection season, there is a certain amount of
13 unpredictability that we like to include in our inspections
14 process, and one of the ways we do that are through random
15 selections. So what that means is the majority of our
16 selections are risk-based. So we evaluate different components
17 of an issuer that we think are high risk and we select those.
18 But what we also do is we randomly select from a population a
19 certain number of issuers that are based literally on being a
20 random selection and not a risk profile and we inspect those.

21 Q. Why does the PCAOB mostly select inspections based on risk?

22 A. Primarily because those are the riskiest for the firms to
23 inspect, and they have the most risk in the issuer profiles.

24 Q. Why are some smaller subset of purely random selections
25 included?

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1 A. In addition to seeing how audits with risk are handled, we
2 also want to see how audits without risk are handled to get an
3 idea of the total performance of audit quality within the firm.
4 So, looking at an issuer where they maybe wouldn't expect us to
5 look, it has allowed us to introduce unpredictability into our
6 process.

7 Q. What is the random number generator?

8 A. That is literally a function within the spreadsheet that
9 allows you to randomly select from items.

10 Q. Let's jump to page 18 of the attachment, which I think is
11 page 20 of the pdf, Mr. Cooney.

12 And directing your attention to the top, "Inspection
13 plans for name of U.S. firm," what is this section of the
14 planning document talking about?

15 A. I'm not sure I understand.

16 Q. OK. Is this -- I'm talking about the inspection plan with
17 respect to the U.S. component of the firm.

18 A. Yes, it is.

19 Q. And let me direct your attention, then, to the section
20 underneath that, titled, "U.S. firm planning considerations
21 effect of prior year Part I inspection findings on current year
22 plan." What is this section addressing?

23 A. So in this section we will summarize what the historical
24 findings in Part I of the report is, and Part I is the public
25 section of our report. And those issues are issues we will

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1 focus on in the upcoming year if we've noticed that there has
2 been historical deficiencies in the area.

3 Q. OK. Let's move to page 22 of the document or page 24 in
4 the pdf. And let me direct your attention to the instruction
5 under "Issue selections and strategy" and ask you to read that
6 paragraph, please.

7 A. "The engagement team selection process includes an
8 evaluation of information related to the U.S. firm, its issuer
9 clients, and referred engagements. This information includes,
10 but is not limited to, the Top 30 Program, star referrals,
11 other deliverables from ORA, tips received through the PCAOB
12 Center for Enforcement Tips, Referrals, Complaints and Other
13 Information, firm specific data, past inspection findings
14 (including remediation findings and root cause analysis
15 information), and information included in issuer filings and
16 other publicly available information."

17 Q. OK. So let's break down what some of those considerations
18 are.

19 What is the Top 30 program?

20 A. So, the Top 30 program is where we obtain information on a
21 number of issuers -- actually more than 30 -- because you can
22 be considered top 30 within the firm. It could be market cap,
23 so the size of the issuer; how big they are, the 30 largest
24 issuers. It could be in revenue to the firm, so the 30 highest
25 revenue-producing issuers. Hours. There is a number of

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1 metrics we consider. And we look at that portfolio, and we
2 evaluate who will be the Top 30 in those. And we then screen
3 all of those issuers where we review all of them and go through
4 a risk evaluation on those to determine which we want to
5 inspect.

6 Q. And if we scroll down to the bottom of the page for a
7 moment and you look at that chart there, where it says "Top 30
8 issuers."

9 A. Mm-hmm.

10 Q. Can you read what it says there with respect to Top 30?

11 A. "Select three to five top 30 issuers for inspection. This
12 requirement applies to the inspections of the U.S. firms of
13 Deloitte, Ernst & Young, KPMG and PwC (hereafter referred to
14 collectively as the Big 4 firms)."

15 Q. Again, was it typical for the GNF planning directives to
16 specify not just that, for example, Top 30 issuers should be
17 looked at but how many?

18 A. Yes.

19 Q. Let's go back up to the list of inspection considerations
20 at the top.

21 What is a star referral?

22 A. A star referral is a rating system used by ORA. And what
23 ORA is, it is one of our offices within the PCAOB, and they
24 support the inspections process, among other things. But for
25 inspections, they go through a list of issuers. They look at

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1 all the issuers in the firm, and they evaluate issuers based on
2 risk. And it may be a certain industry that they determine has
3 risk. It could be a certain type of transactions that they
4 look at. They could evaluate issuers and see what's happening
5 at that issuer, is there something specifically there that's
6 risky. And they will identify a population of issuers for us
7 based on that information, and they rate them using a star
8 system. So an issuer will receive three, two, or one stars,
9 and those are star referrals.

10 Q. And is three stars the riskiest or one star the riskiest?

11 A. Three stars.

12 Q. Let's go to the bottom of the page, and let me ask you to
13 read the directions with respect to ORA star referrals.

14 A. "Select all ORA 3-star referrals. For ORA 2-star referrals
15 it is anticipated that a high percentage of these will be
16 incorporated into the inspection plan (Note: In the areas
17 selected for inspection and the rationale section of the U.S.
18 firm issuer screening template, separately identify all
19 accounting risks and other risks identified by ORA. For those
20 accounting risks and other risks not selected for inspection,
21 the rationale should be documented in this section of the
22 screening template.)"

23 Q. And so, in more plain English, what is this directing with
24 respect to both three-star and two-star referrals?

25 A. So the first thing they're telling us is if anything

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1 receives a three-star referral, that must be inspected. And
2 for those that receive two star referrals, we must inspect a
3 very high percentage of those. In addition, when they rate
4 them with stars, they also determine what we will inspect
5 within that issuer. So they will actually determine the
6 accounting risks or areas we should focus on, and if we're not
7 going to focus on those, we have to document why we're choosing
8 not to use that portion of the referral.

9 THE COURT: Did you say what ORA stands for, O-R-A? I
10 missed it.

11 THE WITNESS: I think it is Office of Risk and
12 Analysis, I think. It has changed its name since then, but I
13 think that is what it was --

14 THE COURT: It is part of the PCAOB?

15 THE WITNESS: Yes, it is.

16 THE COURT: OK. Thanks.

17 BY MS. MERMELSTEIN:

18 Q. Is it also now known as ERA, E-R-A?

19 A. It is now known as ERA, yes.

20 Q. Do you remember what that stands for.

21 A. I think it is Economic and Risk Analysis, I think. I might
22 have that wrong because we use ORA and ERA constantly. We
23 rarely use the full title.

24 Q. But the same group?

25 A. The same group. They've combined with a Center of

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1 Economics that we have within the PCAOB but they do the same
2 thing, yes.

3 Q. Let's go back up to that list of considerations at the top.

4 What does "firm specific data" mean?

5 A. So we obtain a large amount of information from the firm
6 related to specific issuers. It could be what industries
7 they're in, partner information, the information on the
8 engagement team, who participates on it, quality ratings for a
9 partner. We receive a lot of data from them, and so we will
10 look at that data when we're making these selections.

11 Q. Going back up higher in the list, what are the other
12 deliverables from ORA?

13 A. So what they also give us is they give us -- they give us
14 information on -- industry information, so if there is any
15 high-risk industries that we should be looking at. So, during
16 a time where the oil and gas prices are fluctuating
17 dramatically, they may indicate oil and gas issuers are at
18 risk. Or during the credit crisis, financial service
19 industries will be at risk, and they will highlight what types
20 of risks we should be looking at.

21 Q. What does "tips received through the PCAOB Center for
22 Enforcement Tips" mean?

23 A. So those are -- what we call tips are people who
24 anonymously report tips within the PCAOB to us, and they go to
25 our enforcement division. And they evaluate whether or not

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1 they will pursue this. And then they share it with the
2 inspections group. And then we need to evaluate whether there
3 is any reason to look at a specific issuer because of things
4 that happened that occurred on an audit or things that are
5 happening at an issuer, and we will evaluate what tips we
6 receive throughout the year.

7 Q. How about "remediation," what does that refer to?

8 A. Remediation refers to a process where we issue an
9 inspection report. The firm has one year to address any
10 findings that are in Part II of the report. And those findings
11 relate to the quality control deficiencies that we talked about
12 when they -- or when we're looking at the various quality
13 controls throughout the firm and any themes that we've seen.
14 Those go in Part II. And by statute they have twelve months to
15 remediate those. So, the firm creates actions that they put in
16 place to address those findings. And depending on the nature
17 of those actions, if they impact specific issuers, we may look
18 at an issuer to see how effective those actions are.

19 Q. So, in other words, part of the current year's inspection
20 is to look at problems from the prior year and see if they fit
21 in?

22 A. And how they are being addressed in the current year.

23 Q. Then, finally, what is "information included in issuer
24 filings and other publicly available information"?

25 A. We read the 10-Ks for the issuers, and if there is any

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Rodriguez - direct

1 information on what's going on in an issuer, whether they have
2 very large transactions or things that are of high risk, or if
3 they've received comment letters from the SEC where there are
4 items that the SEC is looking at, those all factor into our
5 selection process also.

6 Q. So, stepping back, what is the purpose of having this very
7 detailed level of instruction given as a directive to all of
8 the GNF firms in planning their inspections?

9 A. In order to have a consistent approach with all the firms,
10 that way every firm is being treated the same, the results are
11 comparable, that larger approach is determined by the national
12 office and given to everyone.

13 Q. I want to turn now away from the whole data program and
14 towards how a particular inspection team conducts its planning
15 and how it implements these directives. And so let's use the
16 KPMG team that you lead as an example.

17 A. OK.

18 Q. First, when in the calendar year does the KPMG team really
19 begin in earnest to prepare for the inspection season?

20 A. So there are components of planning happening throughout
21 the year. So, for instance, those ERA referrals, we receive
22 those quarterly and we will evaluate them throughout the year,
23 but the vast majority of our planning efforts begin in the late
24 October/November timeframe.

25 Q. Approximately how many total members are there of the KPMG

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1 inspection team in a given year?

2 A. Somewhere between, just our team, 10 to 15 team members.

3 Q. Is that for the whole inspection team or the planning
4 process?

5 A. For the planning process.

6 Q. And so a subset of the whole team is responsible for
7 planning?

8 A. That is correct.

9 Q. What, if any, information does KPMG provide to the PCAOB to
10 permit for this inspection planning?

11 A. They provide a large amount of issuer data, which is part
12 of what we talked about, firm specific data. They provide us a
13 large amount of geographic information on each of their
14 issuers. That includes information on current year and prior
15 year, all team members, executives on the team, audit hours,
16 audit fees, whether there is foreign locations. It is an
17 extremely large amount of information they're giving us.

18 Q. And then after the KPMG planning team has gotten that
19 information from KPMG and received all the other kinds of
20 information we were just talking about, how is all that data
21 gathered together?

22 A. We accumulate that information and put it in what we call
23 an engagement profile.

24 Q. Is that also known as the GNF Planning Profile?

25 A. Yes, it is.

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1 Q. What is that?

2 A. It's a large Excel spreadsheet which has numerous tabs for
3 all of these components where we screen each of these issuers
4 and document our rationale based on all of this information.

5 Q. Where does that spreadsheet live or reside?

6 A. It resides within IIS, which is our electronic software
7 where we document our inspections process.

8 Q. Who has access to the GNF Planning Profile in IIS?

9 A. At that time it was members of the engagement team current
10 and past and certain members of national office or people
11 throughout the organization, where they deemed it necessary for
12 them to have access.

13 Q. Would that include someone who was just helping out on one
14 particular KPMG inspection but wasn't part of the KPMG team?

15 A. They would get a certain amount of access given to them so
16 that way they could document their inspection, yes.

17 Q. Now, is the information contained in the analysis in the
18 GNF Planning Profile confidential PCAOB information?

19 A. Yes, it is.

20 Q. Does the PCAOB have any written confidentiality rules?

21 A. Within our ethics code we do.

22 Q. So let me show you what's been marked for identification as
23 Government Exhibit 20. Do you recognize that?

24 A. Yes, I do.

25 Q. What is?

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1 A. The ethics code for the organization.

2 MS. MERMELSTEIN: The government offers Government
3 Exhibit 20.

4 MR. OHTA: No objection, your Honor.

5 THE COURT: Government 20 is received.

6 (Government's Exhibit 20 received in evidence)

7 MS. MERMELSTEIN: Let's publish that, Mr. Cooney.

8 Q. And then, Ms. Rodriguez, I would like to direct your
9 attention to EC1. Can you read the provision covering who is
10 bound by the ethics code.

11 A. "The provisions of this ethics code apply, according to
12 their terms, to -- present and former board members and staff;
13 the spouse, spousal equivalent, and dependents of board members
14 and staff; and designated contractors and consultants to the
15 board."

16 MS. MERMELSTEIN: Your Honor, I'm sorry, I think we
17 are having a screen problem again with the screen over here.

18 THE COURT: OK.

19 MS. MERMELSTEIN: I will just work without mine for
20 the moment while we work it out so we can keep going.

21 THE COURT: We have one in the back as well.

22 MS. MERMELSTEIN: Then I will take a break.

23 (Pause)

24 THE COURT: Are we OK for now?

25 OK. Go ahead.

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Rodriguez - direct

1 BY MS. MERMELSTEIN:

2 Q. So, again, just so it is clear, does the ethics code apply
3 to PCAOB employees even after they no longer are employed by
4 the PCAOB?

5 A. Yes, it does.

6 Q. And then let me direct your attention to EC9, which is on
7 page 18, Mr. Cooney.

8 Could you read the provisions of EC9, please?

9 A. Yes. "Unless authorized by the Board, no Board member or
10 staff shall disseminate or otherwise disclose any information
11 obtained in the course and scope of his or her employment, and
12 which has not been released, announced, or otherwise made
13 available publicly. The provisions of this section shall
14 continue in effect after the termination of employment or Board
15 membership."

16 Q. During the course of your employment at the PCAOB, have you
17 received training about the confidentiality provisions of the
18 ethics code?

19 A. Yes, I have.

20 Q. In what form?

21 A. I couldn't probably tell you all of them, but annually, at
22 a minimum, we attend our annual training for all inspectors
23 within the division, and there is always an ethics component
24 that discusses the confidentiality of information. And
25 annually we are required to sign our ethics code agreement. So

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1 there is numerous occasions during the year when this is
2 reminded.

3 Q. How seriously were these confidentiality provisions treated
4 at the PCAOB?

5 A. Very seriously.

6 THE COURT: Overruled.

7 Q. I want to now direct your attention to what's been marked
8 for identification as Government Exhibit 102.

9 Do you recognize that?

10 A. I don't see anything.

11 Q. It takes a moment to come up.

12 A. Yes, I do.

13 Q. What is that?

14 A. This is the planning profile.

15 Q. For what year?

16 A. This is 2015.

17 MS. MERMELSTEIN: The government offers Government
18 Exhibit 102.

19 THE COURT: Government's 102 is received.

20 (Government's Exhibit 102 received in evidence)

21 BY MS. MERMELSTEIN:

22 Q. Now, does this -- sorry. I can have my screen bank. OK.

23 Does this, Government Exhibit 102, relate to KPMG's
24 global inspections or just to the U.S. component?

25 A. The U.S. component. The components that even impact global

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Rodriguez - direct

1 are, if there is a global issuer, the U.S. piece of that global
2 issuer is what is in here, so it is all the U.S. component.

3 Q. And this, you said, was the GNF Planning Profile for KPMG
4 for 2015. Was a similar document used in other years?

5 A. Yes, it is.

6 Q. How large a spreadsheet is this?

7 A. It is extremely large. It is difficult to even open on
8 your computer.

9 Q. OK. So before we start going through -- we won't go
10 through it all, but, Mr. Cooney, could I ask you to just click
11 through each of the tabs so the jury can see generally the
12 scope of the spreadsheet.

13 (Pause)

14 OK. So let's look at just a few of the tabs in closer
15 detail, and let's start with the tab called "Issuer flag
16 detail."

17 What is an issuer flag?

18 A. So, the flags are certain topics that have been identified
19 that could trigger risk within an issuer. So what the planning
20 team does is we go through these flags and determine if we want
21 to use it to screen an issuer, and then we mark that as yes, an
22 applicable flag. And then we determine how much weight we want
23 to give it, so how important do we think this is in any given
24 circumstance.

25 So, once we determine if it is applicable, how much

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Rodriguez - direct

1 weight it should get, this is kind of run against the
2 population issuers, and what it kind of results in is a flag
3 count. So the higher the flag count, the more risk exists at
4 an issuer.

5 Q. Are the flags set the same across all of the GNF firms, or
6 can they be different between the different firms?

7 A. They can be different. You can customize them for whatever
8 risks you believe are more prevalent at the specific firm you
9 are looking at, the issuer profile you are looking at. You can
10 customize these on your team.

11 Q. And you said that the flags are weighted?

12 A. Yes.

13 Q. Are those weightings the same across all four firms or can
14 they be different?

15 A. No, they can be different.

16 Q. So we're not going to go through every flag but let's just
17 look at a few examples.

18 Looking at the gray bar that looks a little green on
19 this screen, that says "Audit opinion issuer audit," in broad
20 strokes, what kind of flags are covered by that category?

21 A. So this primarily talks about the opinions that are being
22 issued, are there any restatements that have occurred, or is
23 this the first year we're looking at an issuer, if there are
24 any restatements where this is a first year ICFR opinion, so
25 the first year there is internal controls opinion, is this the

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1 first year an issuer is public because it was just an IPO.

2 That looks at these types of issues.

3 Q. And so let's look at the first one just as an example. It
4 is under the red number 14. It says, "Dismissed auditor post
5 opinion." What does that mean?

6 A. If the firm changed -- if the issuer changed auditors after
7 the issuance of the opinion.

8 Q. That is a risk factor?

9 A. Potential, yes.

10 Q. Underneath that, in gray, it says, "Yes," and then
11 underneath that it says the number 1. What does that mean?

12 A. So that means -- so if you look above it, it says
13 "Threshold operators." That means if this is yes for an
14 issuer, it is going to have a weighting of 1.

15 Q. OK. So let's scroll across and let's go to column AH,
16 under the heading "Firm related data." It says, "Lead
17 Engagement Partner's Industry Practice Unrelated to Issuer's
18 Industry." What does that mean, and why is it a risk factor?

19 A. So what this means is if the lead engagement partner, or
20 the partner in terms of the audit, is working in an industry
21 outside their specialization, do we believe that to be a risk.
22 So if you have a partner that primarily does banking, are they
23 looking at software; or if you have a healthcare person, are
24 they in banking. So it is really considering is that person
25 qualified to do an audit in the industry that they're doing

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1 that in.

2 Q. OK. Let's keep scrolling across and move all the way to
3 column DM. And under "PCAOB inspection history," it includes a
4 "reference to 'Part I Comments' for various timeframes."

5 Generally speaking, what is that referring to?

6 A. So that's referring to how many Part I comments -- did they
7 have Part I comments in any of these given years. So if that
8 issuer had a Part I comment or had an unsupported audit opinion
9 in the year, they will be asked for that year. So, we'll look
10 at how many times that occurred over this course of years we're
11 looking at here.

12 Q. Looking over just a few columns to column DS, it has
13 information about ORA star referrals.

14 Is this just the ORA star referral system that you
15 were talking about earlier?

16 A. Yes, it is.

17 Q. And let's scroll over a couple of more columns to column
18 DX, which begins a section, "TEAM SPECIFIC ELEMENTS."

19 In broad strokes, what are team specific elements?

20 A. So these are items specific to that engagement team. So,
21 did they have changes in senior managers, did they participate
22 in any of those remedial actions, or some of the quality
23 control that the firm has in place, we look at those, and was
24 there a tip received on this engagement; that type of
25 information is in this section.

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1 Q. In that section, in column DY, it says, "Engagement Subject
2 to In-Flight Review KPMG." What does that mean?

3 A. That means -- what we're looking at there is whether or not
4 this issuer was part of KPMG's inflight review program, which
5 was a pre-issuance review prior to the issuance of the audit
6 opinion that was reviewed.

7 Q. If you look under that column, under "Yes," it has the
8 number 2. How does that -- how does that differ from some of
9 the other weights?

10 A. So these are saying -- so if you look, you will see that
11 these have 2. So it is a little bit riskier than a 1 but not
12 as some of our bigger risks, which would be a 3 I believe in
13 this year.

14 Q. Indeed, I think there is a 3 in column DT --

15 A. Mm-hmm.

16 Q. -- under the star referral?

17 A. Correct.

18 Q. So different risk factors are given more or less weight?

19 A. Yes.

20 Q. Going back to the inflight review, why is that something
21 that is a consideration for whether or not an engagement will
22 be inspected?

23 A. So, when the firms design remedial actions, or they have
24 these quality controls in place, we want to evaluate how
25 effective those actions are. So we will often obtain a list of

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1 issuers who are subject to these and where this is taking
2 place, and we want to inspect those to see, if this review took
3 place, to help the quality of the audit, when we inspected it,
4 did we have findings, and it helps us to evaluate how effective
5 that review may have been.

6 Q. Let's scroll over to column EE, it says, "2014 ALLL focus
7 area review." What is "ALLL"?

8 A. That is the allowance for loan loss.

9 Q. What is the allowance for loan loss?

10 A. So at a bank or a financial services issuer, when you have
11 loans, they have a reserve against those loans, which is the
12 "ALL," which allows for any loans that you ultimately may not
13 collect on, those are adjusted for what they estimate to be
14 collectible in any given period and that reserve is the ALL.

15 Q. Are you a banking auditor specialist, or do you have
16 specialty in another, in a different field?

17 A. I am not a banking specialist. I have industry practice in
18 other fields.

19 Q. Let's scroll all the way to the end and look at columns EJ,
20 EK, and EL. What is described generally in this summary
21 section?

22 A. This is looking at a total flag count for each individual
23 issuer.

24 Q. And, again, what is the significance of the total flag
25 count?

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1 A. The significance is the higher that number, the higher the
2 flag count, that is an issuer that has the most risk based on
3 our evaluation of these factors.

4 Q. So now I want to look at the next tab, the "Issuer
5 Screening Template." Broadly speaking, what is this?

6 A. This is where we document our analysis of each of the
7 issuers we screened for potential selection.

8 Q. Looking at column B, titled, "Selection Recommendation,"
9 "Select equals one, neutral equals two, don't select equals 3."
10 What is that referring to?

11 A. So the team performs the initial review of these issuers in
12 the initial screening, and they will determine based on their
13 review of the issuer whether they recommend it for inspection,
14 whether it could be but it's not necessarily a strong
15 selection, or whether they do not recommend this for selection,
16 and that will be how they show that recommendation with either
17 a 1, 2 or 3.

18 Q. And then if you look in the column C, "Final Selection,"
19 what does that refer to?

20 A. That refers to whether or not we will ultimately select
21 this issuer for inspection.

22 Q. And who weighs in on that decision?

23 A. That would be the ATL on the team, which is the Associate
24 Team Lead, the U.S. Team Lead and the Global Team Lead.

25 Q. Turning to the next column, "Rationale for Selection," what

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Rodriguez - direct

1 does that generally refer to?

2 A. So this gathers all of the data that we've looked at
3 throughout this document and any others, and this summarizes
4 why we picked that issuer for inspection.

5 Q. Looking at the next column, "Selection Purpose, Regular
6 Inspection, FMM, Remediation, Foreign Affiliate, or Off-Year
7 End," what does that refer to?

8 A. This is a summary basically of the reason we're picking the
9 selection. Is it basically because it is a foreign affiliate
10 so it is helping us get coverage in that program? Is it off
11 year end? Does it have some of these FMM actions in place?
12 That's why we put that there.

13 Q. OK. Let's skip ahead a couple of columns to column J,
14 titled, "Areas Recommended for Inspection and Rationale." What
15 is this referring to?

16 A. So for these couple of -- the next column couple of
17 columns, we will document for each of the areas we selection
18 for inspection, why we picked that area.

19 Q. And when you say the areas you've selected for inspection,
20 what does that mean?

21 A. The financial statement area. So if we're looking at
22 revenue or inventory or stock compensation, whatever the
23 specific financial statement item that we want to look at, we
24 have that documented here and why.

25 Q. So just so it is clear, the PCAOB doesn't look at every

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1 area when it conducts an inspection?

2 A. No, that's correct.

3 Q. And this is discussing the areas you are going to look at?

4 A. Correct.

5 Q. OK. Let's go, then, to column N, "Top 30 Issuer." Can you
6 remind the jury how this factors into the selection?

7 A. So we have to -- in this year we were supposed to look at
8 between three to five Top 30 issuers, so this identifies which
9 are our Top 30 issuers.

10 Q. And what about the next two columns, "3-Star Referral,
11 2-Star Referral"?

12 A. The same thing for the star referrals. If this is meeting
13 the criteria we needed for star referrals, we indicate that in
14 these boxes.

15 Q. Let's look at the column numbered AC, titled, "Estimated
16 Workpaper Archive Data."

17 A. Mm-hmm.

18 Q. What does that refer to?

19 A. So when financial statements are filed, the firm is
20 required to archive their work papers within 45 days, and
21 archiving basically means the work papers are locked. No
22 further editing is allowed and they are stored. So what we do
23 here is we estimate what that date will be based on when they
24 last filed the set of financial statements. Because we're --
25 you know, we're doing the screening earlier in the year and

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1 they haven't filed financial statements yet, so we have to
2 estimate when that will be. So we take the last issuance date
3 when they filed the financial statements, we add 45 days, and
4 that's when they estimate they will have closed their files.

5 Q. Why does it matter for the PCAOB to understand when the 45
6 days will be up?

7 A. Because we do not notify inspections to the firm prior to
8 that date, so we need to get an idea of how we can actually
9 schedule this process and how this will look based on what that
10 estimated archive date will be.

11 Q. Why doesn't the PCAOB notice inspections before the 45 days
12 are up?

13 A. Our goal is to review workpapers that haven't been altered
14 or modified with knowledge of an upcoming inspection, so we
15 don't provide that to the firm until we know those workpapers
16 have been archived.

17 MS. MERMELSTEIN: OK. Mr. Cooney, if we can now keep
18 scrolling all the way to the right to get a sense of the number
19 of columns.

20 (Pause)

21 Q. OK. Now, approximately how long a process is it for ORA to
22 weigh in with its risk assessment and then for the planning
23 team to analyze all this information and come up with the
24 proposal of which audits will be inspected?

25 A. From when the bulk of the planning begins, about four

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1 months.

2 Q. We just looked at 2015. So using that as an example,
3 approximately how many man-hours, PCAOB man-hours, go into that
4 process?

5 THE COURT: You mean staff hours.

6 MS. MERMELSTEIN: I do, your Honor.

7 MR. OHTA: Objection, your Honor. Foundation.

8 THE COURT: If you know, you can answer.

9 A. For any given year, it is about 5,000 hours.

10 (Continued on next page)

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Rodriguez - direct

1 BY MS. MERMELSTEIN:

2 Q. And approximately how much does that, as an estimate, based
3 on the number of staff hours, how much does that cost the
4 PCAOB?

5 MS. LESTER: Objection.

6 MS. MERMELSTEIN: I can ask a few more questions
7 first, your Honor.

8 THE COURT: Please.

9 Q. In your role, Ms. Rodriguez, as the associate team lead and
10 then the team lead, did you have access, for planning purposes,
11 to the number of people and the file to which they were
12 assigned to work on the planning process?

13 A. Yes, I do.

14 Q. And have you also, since that time, had access, from the
15 human resources department, to PCAOB records, concerning
16 people's salary information?

17 A. Yes, I have.

18 Q. And based on those two facts, the number of hours people
19 spent and their sort of the cost to the PCAOB of employing
20 them, have you participated in calculating a rough estimate of
21 what the cost to the PCAOB is of all of those hours?

22 A. Yes, I have reviewed that.

23 MS. LESTER: We still object.

24 MR. OHTA: Objection, your Honor.

25 THE COURT: Objection noted, and overruled.

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Rodriguez - direct

1 BY MS. MERMELSTEIN:

2 Q. You can answer. What is the approximate cost?

3 A. Approximately \$500,000.

4 Q. Is that roughly a similar number for 2016 and 2017?

5 A. 2017 is a little bit different, just because of some of the
6 planning efforts that happened but, yes, it is for 2016.

7 Q. So, we will talk more about the later years as we go on.

8 So, once the inspection team has come up with a plan,
9 what is the next step in the process?

10 A. So, once our team has finalized a plan, we present that
11 plan to the national office and GNF leadership, and then we
12 present that plan to the board.

13 Q. At the time that the kind of proposed list is presented
14 first to the GNF planning team in the national office and then
15 to the board, is it completely final?

16 A. It has not been. No, it is not completely final.

17 Q. Are you familiar with something called an internal
18 inspection?

19 A. Yes.

20 Q. What is that?

21 A. So, we pick, in any given year if our goal is, let's say,
22 52 issuers, in our initial plan we will only identify 47
23 because what we do is we leave a certain amount available to go
24 ahead and look at issuers who went through the internal
25 inspection program within the firms.

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Rodriguez - direct

1 Q. Okay. So, let me ask you to slow down a tiny bit and I
2 will slow down a tiny bit.

3 Why is it that the PCAOB specifically looks at a group
4 of audits that have been subject to an internal inspection?

5 A. The internal inspection, it's a significant effort and the
6 monitoring programs within the firms, they do their own
7 inspection of audits completed and we look at that to determine
8 the effectiveness of that program.

9 Q. Are there ever instances in which, after the general plan
10 has been set, there are changes to the inspection plan in terms
11 of who is going to be inspected?

12 A. Yes.

13 Q. What are some examples of why that might happen?

14 A. It could happen because of scheduling issues, it could be
15 issues where an issuer is the subject of an SEC investigation
16 or an investigation that our DEI division is performing so we
17 will not look at those. It could have gone through the firm's
18 inspection process and the firm can assess it as an
19 unsatisfactory audit and we can look at those.

20 There is a variety of issues why we will make changes
21 to the schedule.

22 Q. So I understand the thing you said last, if the firm
23 conducts, you intentionally look at some of the audits that the
24 firm has internally inspected but if the firm itself concludes
25 it failed, then you don't look at it again?

J2E5mid2

Rodriguez - direct

1 A. Correct.

2 THE COURT: We just had some technical issues but I
3 think we are back on track.

4 BY MS. MERMELSTEIN:

5 Q. So, once the list is generally finalized, what kind of
6 information about the inspection schedule is first shared with
7 KPMG?

8 A. At that time in the 2015-2016 time frame, we provided the
9 notification of the first issuer inspections when those were
10 planned to begin, and then we also provided the firm a list
11 that did not include the issuer names but included the weeks we
12 planned to inspect what cities we planned to go to to help them
13 on their planning side.

14 Q. Leaving aside the general notification of where you were
15 going to be geographically at particular times, how is a firm
16 first notified that a particular audit had been selected for
17 inspection?

18 A. They received a notification from us.

19 Q. And when does that notification go out relative to the end
20 of the 45 days?

21 A. Generally, sometime between two and four weeks before we
22 plan to begin the inspection, so after the 45 days.

23 Q. And again, why does the PCAOB wait so long to notify KPMG
24 of which audits it intends to inspect?

25 A. It's a consistent approach that we apply to everyone and

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Rodriguez - direct

1 it's to allow the team a sufficient enough time to prepare for
2 our inspection and provide us workpaper access and what have
3 you, prior to the inspection.

4 Q. Why is it not provided any earlier?

5 A. Because the audit is complete and so it has just never been
6 determined necessary to provide the list up front. We don't
7 want everybody working on it for months in advance of us
8 showing up. We just want to go in and review those workpapers.

9 Q. Why is it important to the PCAOB that the documentation be
10 complete before notification is made?

11 A. We do not want firms modifying the workpapers with
12 knowledge of us just because it is going to be inspected.

13 Q. Are you familiar with any instances in which,
14 notwithstanding that general policy, a firm was notified prior
15 to the expiration of the 45 days?

16 A. Yes

17 Q. How has that happened?

18 A. When we go through that estimation process in the beginning
19 and we include that information on the planning profile, part
20 of what we do is we go back in and update that number with the
21 actual date that the financial statements were filed for that
22 year. So, if there is an error in that process where either a
23 date doesn't get updated or the wrong date is entered, we can
24 be a couple of days after when we notify.

25 Q. Just an error in terms of tracking when it was done?

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Rodriguez - direct

1 A. Yes.

2 Q. What, if anything, did the KPMG inspection team do in such
3 a circumstance?

4 A. When that happened, we contacted the firm to let them know
5 that we had done that, we were aware we did it, and then we
6 asked them to document any changes or modifications that were
7 made to those workpapers once they received notification from
8 us.

9 Q. And was that, that request that the firm document any
10 changes, was that limited to changes that constituted new audit
11 work or just any changes to the documentation at all?

12 A. Any changes.

13 MR. OHTA: Your Honor, vague as to time.

14 THE COURT: Vague as to time?

15 MR. OHTA: Yes.

16 MS. MERMELSTEIN: I think we established at the
17 beginning of Ms. Rodriguez' testimony we were talking about
18 2015 to early 2017 as a general principle unless otherwise
19 specified.

20 Is your answer for that time period?

21 THE WITNESS: Yes.

22 MR. OHTA: She is talking about a specific exception
23 to a general policy. That's why it is vague as it time.

24 THE COURT: Were you talking in general about those
25 years?

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Rodriguez - direct

1 THE WITNESS: Yes.

2 THE COURT: Okay. It is allowed. Did you get an
3 answer to the question?

4 BY MS. MERMELSTEIN:

5 Q. Let's make sure it is clear. I think I did, your Honor.

6 When the KPMG inspection team would ask KPMG to keep
7 track of any changes to the documentation, was that request
8 limited to changes to the documentation that constituted new
9 audit work or to any changes made to the documentation of any
10 kind?

11 A. Any changes.

12 Q. And is the quality of the documentation itself important to
13 the PCAOB?

14 A. Yes, it is.

15 Q. So, going back to the, just to the formal notification
16 process, when the PCAOB notifies a firm that a particular audit
17 has been selected for inspection, does it tell the firm why an
18 audit has been selected?

19 A. No, we do not.

20 Q. Why not?

21 A. It is a confidential process.

22 Q. What happens next in the process after that notification
23 goes out?

24 A. So, once that notification goes out, the inspection team
25 and the engagement team or the national office representative

J2E5mid2

Rodriguez - direct

1 for that engagement team will begin communications and planning
2 for the inspection, and one week prior to the beginning of
3 field work for us we receive access to their workpapers.

4 Q. Just to clarify the terminology here, the engagement team
5 is the KPMG auditors who worked on that particular audit?

6 A. Correct.

7 Q. And the inspection team is the group of PCAOB inspectors
8 who are going to go inspect the audit?

9 A. Correct. Yes.

10 Q. What do you mean by field work?

11 A. So, we generally go to the KPMG office where we are going
12 to be inspecting a specific team or issuer audit and we work
13 from that office for the inspection. We sometimes have what we
14 call our PCAOB base where we do this all telephonically, but
15 the vast majority of our inspections are conducted in person
16 and that is what we refer to as field work for us.

17 Q. What is kind of the big first event of the field work?

18 A. The first event will be, it will take place either the
19 Thursday or Friday before we begin field work or the Monday
20 beginning field work and we will have an opening meeting with
21 the engagement team.

22 Q. Does that meeting have a particular name?

23 A. The kickoff meeting or opening meeting.

24 Q. What happens or who attends that meeting?

25 A. The engagement team members from KPMG and members from

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Rodriguez - direct

1 their national office, it is at their discretion, and from the
2 PCAOB it is all of our inspection team and, at times, whatever
3 team lead was in the field or the ATL if they were in the
4 field, they would attend.

5 Q. What happens at that meeting?

6 A. That is the opportunity for the firm to present the focus
7 areas that we are going to be looking at and they will discuss
8 their approach and rationale for why they performed the
9 procedures they performed, and they also may talk about some
10 more global issues to the audit. So, they could talk about
11 what risks they thought were present in the audit and how they
12 went through that process.

13 They sometimes talk about scoping decisions. And what
14 scoping is is when you have an issuer who exists in many
15 locations, they're not going to do work at every single
16 location because that's impractical. So, they will make a
17 determination what locations are going to perform work, that's
18 called scoping, so sometimes they'll talk about that.

19 So, it is generally they talk about their audit
20 approach and then the specific focus areas we have asked them
21 to discuss.

22 Q. Why is that presentation important?

23 A. It's important because it is our first kind of insight into
24 the engagement team and their thoughts, their rationale, their
25 knowledge of the issuer. That's our first experience with it.

J2E5mid2

Rodriguez - direct

1 Q. How does the team's command of the audit affect the PCAOB's
2 view of the audit?

3 A. It can impact that. Teams that are extremely well prepared
4 and very knowledgeable, it helps us understand workpapers, it
5 helps us to quickly understand knowledge that the team may
6 have, and it helps us to understand why they made decisions
7 they made and risk assessments they made. So, it sets an
8 immediate groundwork for that inspection.

9 Q. Can that affect the outcome of the inspection itself?

10 MR. OHTA: Objection, your Honor.

11 THE COURT: Overruled. You can answer.

12 THE WITNESS: It could.

13 BY MS. MERMELSTEIN:

14 Q. What is sort of the next step after that kickoff meeting?

15 A. So, after that kickoff meeting we have individual meetings
16 with the team members that perform the audit work in the focus
17 areas we are looking at.

18 Q. Generally speaking, how long does the field work portion of
19 the inspection last?

20 A. The most common length of an inspection is a week. It is
21 not uncommon to be either two weeks and, at times for very
22 large issuers, we can be there three to four weeks.

23 Q. And that is an assessment of the workpapers, generally?

24 A. Workpapers or hours helps us to get a sense for how large
25 the audit is.

J2E5mid2

Rodriguez - direct

1 Q. How does the quality of the workpapers affect the PCAOB's
2 view of an audit?

3 A. It impacts it because it helps us understand what was done.
4 Things that are very well documented that we can easily read we
5 can easily cross-reference, we can work our way through the
6 workpapers. It helps, because we understand what happened and
7 there is a very clear documentation and understanding of what
8 work was actually performed.

9 Q. And, can the quality of the workpapers affect the outcome
10 of an inspection?

11 A. Yes.

12 Q. What happens when the PCAOB completes its field work?

13 A. Upon completion of the field work, there will either be a
14 comment form issued if we found deficiency, or there will be no
15 comment forms issued in instances where we have no findings
16 within the inspection.

17 Q. What is a deficiency?

18 A. A deficiency is when we find work that should have been
19 done to be in compliance with the auditing standards that was
20 not done. We call those deficiencies.

21 Q. Can an audit receive more than one comment form?

22 A. Yes, it can.

23 Q. Does KPMG have an opportunity to respond to any comments?

24 A. Yes.

25 Q. How?

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Rodriguez - direct

1 A. The comment form, within the comment form itself there is a
2 place for the firm to denote that it agrees with the facts and
3 if they do not agree, why they do not agree, and whether or not
4 they agree with the issue we have identified and if they do not
5 agree with the issue, why they do not agree with the issue.

6 Q. In addition to looking at all of these individual audits,
7 what does the PCAOB do to evaluate the firm as a whole?

8 A. I'm not sure I understand.

9 Q. Let me rephrase.

10 Does the PCAOB look at the firm's own internal
11 controls?

12 A. Yes, we do.

13 Q. What are the firm's internal controls?

14 A. That is part of the quality control review we do, yes.

15 Q. What is a quality control review?

16 A. We look at some of the controls that the firm has in place
17 around some of the areas we mentioned previously; independence
18 rules, their partner review and evaluation process, client
19 acceptance. It was different -- in any given year the focus
20 may change.

21 Q. During the course of the annual inspection process, does
22 the PCAOB inspection team communicate with KPMG leadership
23 about the inspection process?

24 A. Yes, we do.

25 Q. How frequently do such meetings occur?

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Rodriguez - direct

1 A. Once a month.

2 Q. Who, generally, attends those meetings?

3 A. Generally it will be the audit leadership from KPMG and
4 anybody else that they wanted to attend depending on the topic
5 at the meeting, and then the inspection team leadership and
6 anybody that we would invite to the meeting based on the topics
7 at that meeting.

8 Q. What are the general topics of the meetings?

9 A. There is always a standing item for inspection update and
10 that's where we will talk about the current status of the
11 inspection. And then what we would generally do is there is
12 different remedial actions that the firm may want to discuss or
13 the large part of the agenda is left up to the firm to discuss.
14 So, usually remedial actions, inspection status, things like
15 that.

16 Q. Was ALLL a frequent topic of communication at those
17 meetings?

18 A. At that time, yes.

19 Q. Why?

20 A. It had been an area of historical findings for the firm.

21 Q. When you say that KPMG leadership attended, generally
22 speaking, in that time period we have been talking about, did
23 that include David Middendorf?

24 A. Yes, it did.

25 Q. Were there kind of formal agendas for those meetings?

J2E5mid2

Rodriguez - direct

1 A. Yes, there were.

2 Q. So, after the field work for all of the audits being
3 inspected is complete, approximately how long does it take for
4 the whole inspection process to play out in the active phase?

5 A. Field work weeks you mean?

6 Q. Yes.

7 A. Generally, we would be in the field from the March time
8 frame to sometime September–October.

9 Q. How does the PCAOB report its ultimate findings?

10 A. Ultimately, the culmination of the inspection process
11 results in a report that we will issue for the firm.

12 Q. What does that report contain?

13 A. There are primarily two sections to that report. There is
14 Part I, and that is publicly published and that contains a
15 summary of the issuers that we determined had unsupported audit
16 opinions and were failed audits, those were in Part I. Part II
17 is not made public for a certain amount of time, or potentially
18 never depending on the remediation assessment for the firm, but
19 that contains the quality control findings we may have
20 identified and any thematic findings we may have had at the
21 firm.

22 Q. You just referenced unsupported audit opinions and called
23 them failed audits. What does that mean?

24 A. That means at the time of the audit we determined that
25 there wasn't sufficient audit evidence to support the opinion

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Rodriguez - direct

1 that was issued.

2 Q. Are comments ever issued in circumstances that don't quite
3 rise to that level?

4 A. Yes.

5 Q. And do those appear in Part I?

6 A. No.

7 Q. Where, if anywhere, do they appear?

8 A. They would potentially, depending what they related to,
9 they may be in Part II if they fit in with some of the other
10 quality control observations or thematic observations that we
11 had.

12 Q. Turning first to Part I to the section that talks about
13 issuers where there were failed audits, does that part of the
14 report identify, by name, the issuer, the company being
15 audited?

16 A. No.

17 Q. And with respect to the Part I and Part II, who receives
18 the nonpublic portion of the report?

19 A. The firm and the SEC.

20 Q. And where is the public portion of the report made
21 available?

22 A. The PCAOB website.

23 Q. So, let me direct your attention to Government's Exhibits 1
24 through 6. I think it may be easiest for you to look at them
25 in the hard copy in front of you so you can flip through.

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Rodriguez - direct

1 A. Okay.

2 Q. Do you recognize these?

3 A. Yes. Yes, I do.

4 Q. What are they?

5 A. These are the 2014 reports for KPMG, 2015 reports -- it was
6 through what number?

7 Q. 6.

8 A. The 2016 report and the 2017 report.

9 MS. MERMELSTEIN: Your Honor, I believe 1, 3, and 5
10 are already in evidence so the government offers 2, 4, and 6
11 and to the extent not already offered, 1, 3, and 5 as well.

12 THE COURT: 2, 4, and 6 are received, and I will
13 confirm that Government's Exhibits 1, 3, and 5 were already
14 received

15 (Government's Exhibits 2, 4, and 6 received in
16 evidence).

17 BY MS. MERMELSTEIN:

18 Q. I would like to take a look at Government Exhibit 3, just
19 as an example. Which report is this?

20 A. This is the 2015 inspection report.

21 Q. Looking at the first page of the report, on what date was
22 this issued?

23 A. November 9, 2016.

24 Q. And that's for inspection year 2015?

25 A. Yes.

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Rodriguez - direct

1 Q. Is that a typical amount of time between the inspection
2 year and the issuance of the report?

3 A. Yes. That's not unusual.

4 Q. Why does it take so long?

5 A. When we finished inspections in, let's say October, there
6 is still a significant amount of work to do related to those
7 quality controls that we talked about that we looked at, so
8 that can go on through early in the following year, the
9 January, February time frame. And then, drafting this report
10 and the numerous levels of review that it goes through, takes
11 time.

12 Q. Can you read the text in the black box on the front of the
13 report, please?

14 A. *This is a public version of a PCAOB inspection report.*

15 *Portions of the complete report are omitted from this document*
16 *in order to comply with Sections 104(g)(2) and 105(b)(5)(A) of*
17 *the Sarbanes-Oxley Act of 2002.*

18 Q. So we are looking at the portion of the report that would
19 have been made immediately publicly available?

20 A. Yes.

21 Q. Let's go to page 3 and let me ask you to read that first
22 paragraph.

23 A. *Certain of the deficiencies identified were of such*
24 *significance that it appeared to the inspection team that the*
25 *firm, at the time it issued its audit report, had not obtained*

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Rodriguez - direct

1 sufficient appropriate audit evidence to support its opinion
2 that the financial statements were presented fairly, in all
3 material respects, in accordance with the applicable financial
4 reporting framework and/or its opinion about whether the issuer
5 had maintained, in all material respects, effective Internal
6 Control over Financial Reporting (ICFR). In other words, in
7 these audits, the auditor issued an opinion without satisfying
8 its fundamental obligation to obtain reasonable assurance about
9 whether the financial statements were free of material
10 misstatement and/or the issuer maintained effective ICFR.

11 Q. Let me ask you to slow down just a tiny bit.

12 A. Okay.

13 Q. What does that mean in regular person language?

14 A. That means at the time that this audit opinion was issued,
15 there were audit procedures that were omitted that were of such
16 significance the audit opinion was determined to have been not
17 supported.

18 Q. And then let's go to the second paragraph and let me ask
19 you to read that paragraph a little more slowly.

20 A. The fact that one or more deficiencies in an audit reach
21 this level of significance does not necessarily indicate that
22 the financial statements are misstated or that there are
23 undisclosed material weaknesses in ICFR. It is often not
24 possible for the inspection team, based only on the information
25 available from the auditor, to reach a conclusion on those

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Rodriguez - direct

1 points.

2 Q. What does that mean?

3 A. So, what that means is because there are deficiencies in
4 the audit, that does not necessarily mean that the financial
5 statements have errors in them. Sometimes the work that is not
6 included in the audit file doesn't allow us to know whether or
7 not the number is right or wrong. What we have insight into is
8 that the audit procedures weren't sufficient in order to know
9 whether the number was right or wrong.

10 Q. Let's go to Government Exhibit 4. And what are we looking
11 at now?

12 A. This is the 2015 inspection report for KPMG.

13 Q. Go ahead.

14 A. This is another version, an additional version of that
15 report.

16 Q. This is portion that was initially non-public?

17 A. That's correct.

18 Q. Is it still nonpublic?

19 A. Portions of it are no longer nonpublic.

20 Q. So that portions are now public?

21 A. Or that, yes.

22 Q. Why?

23 A. Based on the remediation work that was done by the firm,
24 portions of that remediation work were determined not to be
25 sufficient, therefore those respective portions of Part II

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Rodriguez - direct

1 remained public.

2 Q. Okay. Let's jump quickly to page 46 of the report, I think
3 it is 47 in the pdf, Mr. Cooney. Directing your attention to
4 the section: Issues related to qualify controls, Part 2; what
5 is this section of the report?

6 A. This is the section where we discuss quality control
7 findings within the firm.

8 Q. Let's jump ahead to page 51 of the document, 52 in the pdf,
9 and if you read, can you read the first paragraph under
10 deficiencies in the system of quality control related to
11 testing accounting estimates?

12 A. *The inspection results indicate that the firm's system of
13 quality control does not provide the reasonable assurance
14 described in QC 20, paragraphs .03 and .17, that the work
15 performed by the firm's personnel with respect to testing
16 accounting estimates, including the ALL, will meet the
17 requirements of AS No. 14, AU 328, and AU 342. The inspection
18 team identified nine audits in which the firm appeared not to
19 have met those requirements including six audits discussed in
20 Part I of this report.*

21 Q. So, what does that mean?

22 A. So, what that means is we have findings related to the
23 auditing around the ALL and we had findings in nine audits, but
24 for six of them the findings were determined to be of such
25 significance that the audit opinion would have been unsupported

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Rodriguez - direct

1 so those six are in Part I.

2 Q. And the other three are just?

3 A. They're in this finding section where we talk about overall
4 issues with the auditing of estimates, specifically the ALL.

5 Q. Okay. We can take that down. Thank you, Mr. Cooney.

6 So, you said that the firm gets the full report in the
7 first instance and the SEC gets the full report. Why does the
8 SEC get the full report?

9 A. In their role as oversight over the PCAOB, they obtain that
10 report.

11 Q. Other than providing the inspection report itself, were
12 there other ways in which the PCAOB reported on inspection
13 results to the SEC?

14 A. There are other ways we communicate, yes.

15 Q. Can you give us some examples?

16 A. Yes. We issue, at times what we call 4004 reports, and
17 those reports communicate to the SEC any time we see violations
18 of the SEC rules when we are looking at an issuer audit or an
19 inspection of the firm, and we also issue them in instances
20 where we find GAAP or accounting rule violations that are
21 significant, we report those also.

22 Q. So, 4004 reports don't just report that an audit was done
23 poorly, for example?

24 A. No.

25 Q. Were there ever in-person meetings between PCAOB personnel

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Rodriguez - direct

1 and the SEC?

2 A. There were.

3 Q. And, did you participate in those meetings?

4 A. I have not.

5 Q. Who did, generally?

6 A. Different, depending on the topic. It would often be
7 leadership within the PCAOB, the division, or the GNF program

8 Q. So, I want to return for a moment to some of your earlier
9 testimony and let me direct your attention back to Government
10 Exhibit 102. Can you remind the jury -- it is going to take a
11 minute to come up -- what Government Exhibit 102 is?

12 A. This is the planning profile.

13 Q. And can you remind the jury, generally, how the PCAOB made
14 sure that there would be big-picture consistency across the
15 GNF, inspection of GNF firms?

16 A. The GNF national office develops our approach, annually.

17 Q. Would it be typical for the member of one planning team,
18 say the Deloitte planning team, to look at the GNF profile for
19 the KPMG planning team?

20 A. Not in my experience, no.

21 Q. Why not?

22 A. Because the information contained within this file is
23 confidential for that team.

24 Q. Would it have been useful for the member of another team to
25 look at this?

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Rodriguez - direct

1 A. Not in my experience, no.

2 Q. Why not?

3 A. Because this information is very specific to the firm. It
4 talks about risks that are at the firm's issuers or risks that
5 are present in the firm. So, it is very specific for our firm.

6 Q. Let me direct your attention to what's in evidence as
7 Government Exhibit 92 and just so it is clear, prior to
8 preparing to testify here, had you ever seen this document?

9 A. No, I have not.

10 Q. Directing your attention to the first document on the list,
11 copy of EY 2017 issuer screening template; what is that?

12 A. I haven't see it, I haven't seen it before. What that
13 document appears to be is a summary of some of the information
14 that is contained in our planning profile that we all use in
15 another document kind of skimming down to use for a screening.

16 Q. You said "our." You mean our PCAOB, right? This is the
17 E&Y version of it?

18 A. Yes, right.

19 Q. So it is a subset of the GNF profile, essentially?

20 A. That's what it appears to be.

21 Q. And maybe this is the same question but would that have any
22 utility to someone working on planning for a non-E&Y team?

23 A. Not in my experience, no.

24 Q. And, can you remind the jury what EY is?

25 A. Ernst & Young.

J2E5mid2

Rodriguez - direct

1 Q. Let me direct your attention now on this same document to
2 the document titled 2017 KPMG U.S. inspection, top 30
3 recommendations for 2017. Sorry, it just says top 30
4 recommendations. Let's take a look at that, at Government
5 Exhibit 80 in evidence. What are we looking at, Ms. Rodriguez?

6 A. This was a document prepared by our planning team in order
7 to discuss the top 30 recommendations that they had identified
8 for consideration for inspection.

9 Q. And let's go to the second page for a moment and do you see
10 where it says: Recommendation: Valero Energy?

11 A. Yes.

12 Q. What is contained under reasons for inspecting in 2017?

13 A. These would have been the risk factors present at Valero
14 that were reasons for the planning team to determine that we
15 should inspect this issuer.

16 Q. What, if any utility, would this document have to someone
17 working on the planning team for a non-KPMG firm?

18 A. None that I could see given the specific nature of all of
19 these comments within this document to these issuers or the
20 firm.

21 Q. So let's look at another one of the documents listed on
22 Government Exhibit 92 and let's pull up Government Exhibit 81.
23 What is this?

24 A. So, this document is a document prepared by our planning
25 team to use when myself, as the associate team lead at the

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Rodriguez - direct

1 time, the U.S. team lead, and the global team lead, were
2 reviewing it. There is a lot of documentation and planning so
3 in order to assist in seeing a global approach or a picture of
4 what the selections looked like and what our approach looked
5 like, this summary was prepared to assist in that review.

6 Q. Let's look at the second page of that document for a
7 moment. What is being discussed under Domestic Inspection
8 Buckets discussion?

9 A. So, what this is going through are all the buckets that we
10 want to cover in an inspection year, so for instance top 30
11 issuers or the star referrals that we previously discussed, any
12 judgmental selections which are some that our team may have
13 picked based on risk factors at the team we were inspecting.
14 This goes through all of those buckets that we want to cover in
15 an inspection season and where we are going to land with those
16 buckets.

17 Q. What about the topic area, areas of national office focus
18 for 2017? What is this talking about?

19 A. So, the national office determines certain areas that we
20 were going to inspect in any given year for a variety of
21 reasons, whether it's data-gathering or understanding where
22 areas of deficiencies are. So, for those areas that are
23 determined by the national office for everyone, we would go
24 through how we were going to address those and how we were
25 building those in our plan.

J2E5mid2

Rodriguez - direct

1 Q. And then let's turn to page 3 of this document, please, and
2 let me direct your attention to the section titled Monitoring
3 Program Coverage, 2017 versus 2016. What is this discussing?

4 A. So, what this is talking about is part of the firm's
5 remediation or response to a previous report, they have certain
6 monitoring programs that they put in place to remediate those
7 deficiencies. So, what we are looking at here is this is where
8 I mentioned earlier we would often find out how many issuers
9 were in any given program and then we would pick a certain
10 amount of those. So, what this is going through is saying for
11 each of these programs, here is how many issuers participated,
12 here is how many we are looking at, and some information on
13 those programs.

14 Q. So, directing your attention to the column ALL Monitoring
15 and Support Program, what does that indicate?

16 A. So, what that is saying is the issuers, there were 29 that
17 were in the program, and we were going to inspect four of them.

18 Q. Do all of the firms in the GNF program have the same
19 monitoring programs in place?

20 A. No, they do not.

21 Q. Again, what utility, if any, would Government Exhibit 81
22 have to someone who is not on the KPMG planning team?

23 A. None that I would see given the specific nature of this
24 information.

25 Q. Let's look at one more of the documents listed in

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Rodriguez - direct

1 Government Exhibit 92 and let's jump to Government Exhibit 91.

2 What is this?

3 A. This is a similar document. This is specifically focusing
4 on monitoring programs.

5 Q. And again, what, if any, usefulness would this document
6 have to someone not on the KPMG U.S. team?

7 A. None that I could see, given the specific nature of the
8 information.

9 Q. Now, with respect to the document that we just looked at in
10 that category, where would those kinds of documents have been
11 stored at the PCAOB?

12 A. Generally within the planning folders within our IIS file.

13 Q. Let me turn your attention now to focus on KPMG. Focusing
14 on approximately 2015, what was the makeup of the PCAOB team
15 responsible for inspecting KPMG?

16 A. We would have had about 40 to 50 inspectors that were going
17 in the field and performing inspections, and then we had a
18 global team lead who would have sat over the domestic and
19 international inspections for the firm, a U.S. team lead who
20 would be responsible for the U.S., an affiliate firm
21 coordinator, the AFC who would have been responsible for the
22 international inspections, the associate team lead which is the
23 role I held. We would also have a remediation leader who would
24 be responsible for looking at all those remedial actions that
25 the firm had developed. And, we would have an FMM leader who

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Rodriguez - direct

1 would be responsible for the procedures we were performing over
2 the quality controls within the firm as a control.

3 Q. So, you say there were 40 to 50 inspectors performing the
4 inspections?

5 A. Generally, yes.

6 Q. In that rough time period, who was the global head for KPMG
7 inspections overseeing both the U.S. and the affiliate and
8 international?

9 A. In 2015 it would have been Paul Bijou.

10 Q. And who was the KPMG U.S. lead?

11 A. In 2015, 2016 in that time frame it would have been Steve
12 Schindler.

13 Q. What was your role?

14 A. I was associate team leader.

15 Q. What, if any role, did Boss Ross have?

16 A. At that time, Bob sat over most of our banking inspections
17 and he was our banking ATL or associate team leader.

18 Q. Between 2015 and 2017, was Jeffrey Wada on the KPMG U.S.
19 inspection team at any point in time?

20 A. Not to my knowledge.

21 Q. What, if any connection, did he have to the KPMG team?

22 A. My understanding, he worked on the inspections of the Japan
23 affiliate so he would have been on the international side.

24 Q. In 2015, how was KPMG performing on inspections.

25 A. As compared to the other firms, they had a much higher rate

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Rodriguez - direct

1 than the other issuers in Part I.

2 Q. Let me direct your attention to what is marked for
3 identification Government Exhibit 1357. What is this?

4 A. This is a summary schedule comparing the KPMG Part I
5 findings, those issuers that had the deficient audits or
6 unsupported opinions, to those of the other five members of the
7 GNF program.

8 Q. What is the source of the information contained in this
9 chart?

10 A. The Part I section of those published inspection reports.

11 Q. Let me direct your attention to what is in front of you in
12 your binder as a CD marked for identification as Government
13 Exhibit 7. It should be in kind of a plastic sleeve.

14 A. I think I am seeing it -- yes.

15 Q. Does that contain all of the inspection reports that
16 underlie this chart, other than the ones that are marked as
17 Government's Exhibits 1 through 6?

18 A. Yes.

19 MS. MERMELSTEIN: The government offers Government
20 Exhibit 1357.

21 THE COURT: 1357 is received.

22 (Government's Exhibit 1357 received in evidence)

23 BY MS. MERMELSTEIN:

24 Q. Let's publish to the jury and look at this for a moment.

25 What is the title of this chart?

J2E5mid2

Rodriguez - direct

1 A. 1357; KPMG GNF firms: Number of issuers with deficient
2 audits.

3 Q. Is a deficient audit the same thing as an issuer who was in
4 Part I?

5 A. Yes.

6 Q. What does it show in the column all the way on the left?

7 A. The inspection year.

8 Q. And then, next to that, what does it show for KPMG?

9 A. Those are the counts of the KPMG issuers in Part I for
10 those respective years.

11 Q. Then, if we go all the way to the right to the column under
12 average number of issuers with deficient audits for other GNF
13 firms, what does that calculate?

14 A. That takes the average number of issuers in Part I for the
15 other five firms in any given year.

16 Q. So, in 2012, how many issuers did KPMG have in Part I?

17 A. 17.

18 Q. What was the average for the other GNF firms?

19 A. 18.4.

20 Q. So, KPMG was a little better than average?

21 A. Yes.

22 Q. And in 2013?

23 A. 23.

24 Q. How does that compare to the competitor firms?

25 A. 19.4.

J2E5mid2

Rodriguez - direct

1 Q. What about how many issuers did KPMG have that had
2 deficient audits in 2014?

3 A. 28.

4 Q. And how did that compare to the average for other GNF
5 firms?

6 A. It was higher. Theirs was 17.4.

7 Q. So, more than 10 higher?

8 A. Yes.

9 Q. And 2015, how many deficient audits in Part I did KPMG
10 have?

11 A. 20.

12 Q. And how did that compare to the other firms in the GNF
13 program?

14 A. 13.6 was the number.

15 Q. Finally, looking at 2016, how many deficient audits did
16 KPMG have in Part I?

17 A. 22.

18 Q. How did that compare to the other audits for the other GNF
19 firms?

20 A. 12.6 was the other.

21 Q. Okay. we are going to talk more about what happened in 2016
22 but, just so it is clear, this 22 on the chart, is that out of
23 a universe of, does that include the replacement inspections
24 that we are going to talk about and the original ones? Or just
25 one universe?

J2E5mid2

Rodriguez - direct

1 A. I believe that is just the original.

2 Q. So --

3 A. Sorry, can I clarify that? That is just the 51, it doesn't
4 include the additional three from the original.

5 Q. We will come back to that so it is clear.

6 Now, other than the formal inspection process and the
7 monthly meetings we have talked about, were there other ways by
8 which members of a big firm, a GNF firm interacted with the
9 PCAOB?

10 A. Yes.

11 Q. What were those?

12 A. There were board meetings held, sometimes once or twice a
13 year with the firm and the Board where they would come in and
14 speak to the Board on various topics that the Board would
15 request.

16 Q. And, are you familiar with something called the SAG, the
17 Standing Advisory Group?

18 A. I am.

19 Q. So, what is that?

20 A. So, that group has members that come from some of the large
21 firms, they come from large issuers or academia and they advise
22 the board on various topics that are standard setting or there
23 is of interest that the board is considering in looking at.

24 MS. MERMELSTEIN: Your Honor, I am happy to keep going
25 but this is a logical breaking point if you want to take the

J2E5mid2

Rodriguez - direct

1 midmorning break.

2 THE COURT: Do you want to take a bathroom break?

3 JUROR: Yes.

4 THE COURT: We will take a 10-minute break, folks.

5 Leave your pads on your chairs and we will continue in 10
6 minutes.

7 (Continued on next page)

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J2E5mid2

Rodriguez - direct

1 (Jury not present)

2 THE COURT: Ma'am, you can step down as well, if you
3 would like.

4 THE COURT: Folks, we will see you in 10 minutes.

5 (recess)

6 THE COURT: Do we have everybody?

7 Okay, please, bring in the jury.

8 (Continued on next page)

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J2E5mid2

Rodriguez - direct

1 (Jury present)

2 THE COURT: Ms. Mermelstein, you may proceed.

3 MS. MERMELSTEIN: Thank you, your Honor.

4 BY MS. MERMELSTEIN:

5 Q. Ms. Rodriguez, I would like to turn your attention now to
6 approximately February of 2017. Did there come a time that
7 KPMG informed the PCAOB that it was in possession of the
8 PCAOB's list of inspections for 2017?

9 A. Yes.

10 Q. At the time that the PCAOB received that notice, had it
11 begun the 2017 inspections?

12 A. No, we had not begun inspections.

13 Q. What did the PCAOB do in response to learning that
14 information?15 A. We had to replan all of the 2017 inspection selections and
16 get rid of our old list and begin again.17 Q. So, you started fresh in picking audits that would be
18 inspected?

19 A. Yes. That's correct.

20 Q. How much work was it to do that?

21 A. It was a significant amount of work.

22 Q. Approximately how many people were involved?

23 A. We had approximately up to 25 people involved in that
24 effort.

25 Q. And when you say it was a significant amount of work, can

J2E5mid2

Rodriguez - direct

1 you put a rough estimate of the number of staff hours that were
2 put towards doing that?

3 A. For just our team, the KPMG planning team, it was
4 approximately 2,000 hours.

5 Q. Meaning that doesn't include other components of the PCAOB
6 that also participated?

7 A. Correct.

8 Q. I want to show you, just for identification, Government's
9 Exhibits 1351 through 1356. Mr. Cooney is going to scroll
10 through them. They are also in the front cover of the binder
11 in front of you.

12 Do you recognize these?

13 A. Yes, I do.

14 Q. What are they?

15 A. These are the issuer lists -- issuers selected for
16 inspection for 2015, 2016, and 2017.

17 Q. In reviewing these charts, did you rely on various PCAOB
18 documents?

19 A. Yes, I did.

20 Q. So, let me direct your attention back to those sleeves with
21 the CDs in front of you, and showing you first Government
22 Exhibit 125 for identification.

23 A. Okay.

24 Q. What is contained on that CD?

25 A. That is the 2015 inspection summary memorandum.

J2E5mid2

Rodriguez - direct

1 Q. And, just so the jury understands, what are summary
2 inspection memoranda?

3 A. So, at the end of every inspection each inspection team
4 will prepare what we call incident inspection summary
5 memorandum, you often hear them referred to as ISMs, and that
6 will document the procedures that we performed and the work
7 that we reviewed in all of the focus areas and any other areas
8 of interest on our inspection, and we will also document if
9 there were any comment forms or findings based on those
10 procedures.

11 Q. So, one exists every time there is an inspection?

12 A. That's correct.

13 Q. Turning your attention to Government Exhibit 126 for
14 identification --

15 A. Yes.

16 Q. -- what does that contain?

17 A. Those are the 2016 inspection summary memorandum.

18 Q. Turning to 127 for identification, what does that contain?

19 A. Those are the 2016 inspection notifications.

20 Q. And we will get to this in a moment, but are those all of
21 the inspection notifications or just inspection notifications
22 for inspections that did not ultimately occur?

23 A. Those that did not ultimately occur.

24 Q. Let's turn to 128 for identification. What is that?

25 A. This is the 2017 KPMG attribute schedule.

J2E5mid2

Rodriguez - direct

1 Q. And 129; what is that?

2 A. That is the 2017 GNF planning profile as of February 3rd.

3 Q. Are those all documents that underlie the lists of issuers
4 that were inspected?

5 A. Yes, they are.

6 Q. And then, just one more document while you are looking at
7 documents, let me direct your attention to Government Exhibit
8 130, it is a a hard copy document, we can also pull it up,
9 Mr. Cooney.

10 What is that?

11 A. That is the 2016 issuer key.

12 Q. What is the issuer key?

13 A. When we prepare an inspection report, the issuers that they
14 relate to or write-ups relate to do not disclose what issuer
15 they are specifically, so we use a referencing system where we
16 will use a number in the alphabet or something, depending how
17 we use the letters, it will say issuer AA, or issuer BB, and
18 this is the key that links that reference in the report to the
19 issuer we are speaking about.

20 MS. MERMELSTEIN: The government offers Government's
21 Exhibits 1351 to 1356.

22 THE COURT: They're received.

23 (Government's Exhibits 1351 to 1356 received in
24 evidence)

25 BY MS. MERMELSTEIN:

J2E5mid2

Rodriguez - direct

1 Q. Let's walk through the chart and let's start with
2 Government Exhibit 1355. Let me ask you to read, slowly, the
3 heading of this document.

4 A. 2017 Inspections: KPMG Issuers on PCAOB Inspection List as
5 of January 9, 2017.

6 Q. How do you know that these were the issuers that the PCAOB
7 was planning to inspect as of January 9 of 2017?

8 A. We have various schedules we use as part of our planning
9 process and one of them is the KPMG attribute schedule and that
10 will summarize any attributes or items that this inspection is
11 going to help us get coverage on or any special items that are
12 of interest, and we have a version from January 9th that
13 contained these issuers.

14 Q. And so, in the bottom right-hand corner where it says
15 GX- 128 attribute schedule, that's just referencing where this
16 information came from?

17 A. That's correct.

18 Q. Is that system of keeping track of where things came from
19 true for all the charts we are about to look at?

20 A. The reference at the bottom, yes.

21 Q. Let's go to 1356, please, and again, if you can read the
22 title of this document?

23 A. 2017 Inspections, KPMG Issuers on PCAOB Inspection List as
24 of February 3rd, 2017.

25 Q. Again, how do you know that these were the issuers the

J2E5mid2

Rodriguez - direct

1 PCAOB planned to inspect as of February 3rd, 2017?

2 A. So, the planning profile, which is that very large
3 spreadsheet we looked at earlier, we have a version from
4 February 3rd that contains these issuers.

5 Q. Did you participate in the 2017 inspection of KPMG?

6 A. Yes, I did.

7 Q. In what role?

8 A. I was the associate team lead at that time.

9 Q. And that inspection took place after PCAOB had been
10 notified about this confidential information issue?

11 A. Yes.

12 Q. Did the PCAOB approach that inspection any differently in
13 light of the information it had learned beyond choosing new
14 issuers to inspect?

15 A. No.

16 Q. Is there any difference in how it decided whether to write
17 a comment?

18 A. No.

19 Q. Did there also come a time that the PCAOB learned that KPMG
20 had been in possession of confidential PCAOB information with
21 respect to financial issuers inspected in 2016?

22 A. Yes.

23 (Continued on next page)

J2edmid3

Rodriguez - direct

1 Q. At the time that the PCAOB learned that information, had
2 the 2016 inspections taken place?

3 A. Yes, they had.

4 Q. What, if anything, did the PCAOB do in light of that
5 information?

6 A. We made the decision to inspect all of the financial
7 services issuers that we had reselected for 2017 to also look
8 at them for 2016.

9 Q. Did the PCAOB know for sure when it received that
10 information whether or not the audits had actually been
11 affected in any way by the receipt of confidential information?

12 A. No, we did not.

13 Q. From the PCAOB's perspective, what, if any, purpose did
14 selecting replacement inspections serve in that regard?

15 A. So in the event that there was in fact a breach of
16 confidentiality and those audits could have been affected or
17 those files were affected, this allowed us to pick a new set of
18 inspections that would not have been known to anyone at that
19 time and provide us a confidential list to work from again.

20 Q. Would that allow you to compare the results with respect to
21 the first set for which there was an allegation that
22 confidential information had been received and the second set
23 where there was no such problem?

24 A. Yes.

25 Q. Again, did the PCAOB approach these 2016 financial

J2edmid3

Rodriguez - direct

1 institution replacement inspections any differently than it
2 generally approaches an inspection?

3 A. No, we did not.

4 Q. And was there any difference with respect to whether or not
5 it decided to run a comment?

6 A. No, there was not.

7 Q. Can you describe for the jury the process by which after an
8 individual inspection team has written a comment, how that
9 flows through the PCAOB and into the ultimate decision as to
10 whether or not that will be included in the inspection report
11 at all and whether or not it will be in Part I or Part II?

12 A. Sure. So after there is a comment written, the firm
13 responds as to whether or not they agree, if there was any
14 additional information for us to consider. And in the event
15 that there is additional information, we go through that
16 information and we reevaluate whether or not that comment
17 should still be included in the report or not. Once that
18 process is completed and we have the list of comments that
19 should be included in the report, the KPMG inspection team will
20 draft the Part I and Part II sections of the report, and they
21 go through a review from inspection team member all the way
22 through the U.S. team lead and at times the global team lead.
23 They are then provided to the report writing national office
24 group, who reviews in detail those sections of the report and
25 compares them to the comment forms and underlying support, and

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Rodriguez - direct

1 that group does that for all of the GNF firms. And once it has
2 gone through that level of review, we have a level of we call
3 it a vault check, and that checks the accuracy. So it does all
4 the support, matches what we've written. And once it has gone
5 through vault check, it goes through review the report. Then
6 we'll go through the review of our standards group, our OGC, or
7 General Counsel's Office, and the board.

8 Q. OK. So let me turn your attention now to 1352, in
9 evidence. What is the title of this?

10 A. "KPMG 2016 inspections: KPMG issuers initially inspected
11 by the PCAOB."

12 Q. And so what does that mean?

13 A. This is the listed issuers we inspected in 2016 prior to
14 this.

15 Q. And let's go to 1353. What is this?

16 A. So there is two groups of issuers here. At times we will
17 send a notification to the firm that we would like to inspect
18 an issuer and for a variety of reasons, we do not ultimately
19 perform that inspection. So those first five issuers are
20 issuers where we notified KPMG we would be performing an
21 inspection but did not, and the second group of issuers are
22 issuers where we planned to perform an inspection but for
23 reasons within the engagement team -- I'm sorry, the inspection
24 team prior to notification of the firm, we made a change.

25 Q. And with respect to the first group, what is the source of

J2edmid3

Rodriguez - direct

1 that information?

2 A. The notifications we provided to the firm.

3 Q. And what about the second group?

4 A. That's based on my recollection and documentation within
5 our files, yes.

6 Q. OK. So now let's look at Government Exhibit 1354. What is
7 this?

8 A. Those are the additional financial services replacement
9 inspections that we performed for 2016 in 2017.

10 Q. So this is the group you selected after you were notified
11 of the confidential information by PCAOB -- by KPMG, excuse me?

12 A. Yes.

13 MS. MERMELSTEIN: We can take that down. Thank you,
14 Mr. Cooney.

15 Q. Has the 2016 report come out?

16 A. Yes, it did.

17 Q. When did it come out?

18 A. This January.

19 Q. January of what year?

20 A. '19.

21 Q. How does that compare to when the report typically would
22 have been issued?

23 A. It's not unusual for the timing. It's on the latter end of
24 it, but it's within the range of when reports have been issued.

25 Q. Sorry. I think my question is a bit unclear.

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Rodriguez - direct

1 Let's look at it this way. Let me show you Government
2 Exhibit 1359, in evidence. What is this?

3 A. This is a schedule that lists the dates of the-- the report
4 release date of a report publication date, the date we issued
5 our reports for the respective firms.

6 Q. Can you just go through for the jury the date on which the
7 KPMG report issued in 2013 through 2015?

8 A. Sure. The 2013 report issued on 9/24/2014. The 2014
9 report issued 10/15/2015. The 2015 report issued on 11/9/2016.

10 Q. Stop there for a second.

11 So, in other words, in those years the KPMG report
12 issued in the September to November of the following year; is
13 that right

14 A. That's correct.

15 Q. And if you, generally speaking, sort of look at the chart
16 for all the GNF firms, that sometimes spilled into December,
17 even January of the following year?

18 A. Mm-hmm. That's correct, yes.

19 Q. When did the 2016 report issue?

20 A. January 15th, 2019.

21 Q. Was that sort of the normal expected schedule for when it
22 would issue?

23 A. That is delayed.

24 Q. Why was it delayed?

25 A. We had to -- it's primarily delayed because we had to

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Rodriguez - direct

1 perform the additional ten inspections that we performed in
2 2017, which was our next inspection year. And then once we
3 completed those inspections, we had to write them up in Part I.
4 And, in addition, we had to reconsider Part II of our report in
5 light of those findings. So all of our quality controls and
6 schematic findings that we would normally have in Part II had
7 to be reevaluated based on updated findings.

8 Q. Now, this chart shows that for 2017, which you would have
9 expected to issue in September or December of 2018,
10 approximately, those have not issued for Ernst & Young, Grant
11 Thornton, BDO or PwC. Why is that?

12 A. I don't know every reason because I am not on those teams,
13 but what I do know is that in order to get the --

14 MS. LESTER: Objection.

15 THE COURT: I will sustain it.

16 BY MS. MERMELSTEIN:

17 Q. Leaving aside any other explanation of which you are not
18 aware of --

19 A. OK.

20 Q. -- what is your personal knowledge about the delay in the
21 issuance of these reports?

22 A. To issue the KPMG 2016 and 2017 reports, there was a
23 significant manpower that was required to do that work, so
24 there was a full focus of the report writing, national office
25 resources and team resources focused on KPMG and working on

J2edmid3

Rodriguez - direct

1 these reports.

2 MS. MERMELSTEIN: Can I have one moment?

3 THE COURT: Yes.

4 (Pause)

5 MS. MERMELSTEIN: I apologize. I think I have not
6 formally offered Government Exhibit 1359 but I will do so now.

7 THE COURT: 1359 is received.

8 (Government's Exhibit 1359 received in evidence)

9 BY MS. MERMELSTEIN:

10 Q. In general terms, how did KPMG perform on the 2016 initial
11 financial institution inspections as compared to the
12 replacement inspections?

13 A. So the 2016 original selections had -- did not have any
14 findings related to the general reserve piece of the ALL, and
15 there were I believe two comment forms or two issues. There is
16 one in one part of the report and one in another related to a
17 different issue with the ALL on the specific reserve.

18 Q. And that is a very specific thing that one area didn't have
19 comments. Why was that significant?

20 A. That was the area of historical findings for the firm.

21 Q. And how did that compare to the replacement set?

22 A. The replacement set I believe had six issuers that had
23 findings in Part I related to the general reserve.

24 Q. So much worse?

25 A. Yes.

J2edmid3

Rodriguez - direct

1 Q. And just to clarify, what you do mean by "findings"?

2 A. So, findings would be deficiencies in the audit or comment
3 forms that are issued. It is not necessarily one comment form,
4 so it is not a one-to-one, but it is deficiencies in that area.

5 Q. And now that we've talked a little bit about the
6 replacement inspections, can you explain what you meant with
7 respect to -- let's pull up 1357, if we can, Mr. Cooney, for a
8 moment.

9 When you said that the number for 2016 here included
10 the replacement inspections but not the initial set, what do
11 you mean by that?

12 A. So when we drafted the 2016 report, you will see discussion
13 of 51 issuers. And what those 51 issuers are, the initial 52
14 that we inspected, minus the 11 which were potentially
15 compromised, plus the additional ten we performed. So, that
16 totaled to 51 issuers.

17 Q. OK. Understood.

18 MS. MERMELSTEIN: OK. So let me now show just the
19 witness Government Exhibit 1358.

20 Q. Do you recognize this?

21 A. Yes, I do.

22 Q. What is it?

23 A. This is a summary of issuers in Part I of the report, with
24 findings related to the ALL general reserve.

25 MS. MERMELSTEIN: The government offers Government

J2edmid3

Rodriguez - direct

1 Exhibit 1358.

2 THE COURT: 1358 is received.

3 (Government's Exhibit 1358 received in evidence)

4 MS. MERMELSTEIN: If we could publish that,
5 Mr. Cooney.

6 Can I have just one moment, your Honor?

7 THE COURT: Yes.

8 (Pause)

9 BY MS. MERMELSTEIN:

10 Q. Sorry, Ms. Rodriguez. OK.

11 So let's walk through this. First, when you say "KPMG
12 issuers with ALLL general reserve deficiencies," again, what is
13 the significance of that category?14 A. So, when you look at the allowance for the loss, there is
15 two components to it. There is the specific reserve, which
16 identifies reserves on specific loan balances, and then there
17 is the general reserve, which looks at all of your loans
18 together and makes decisions about a reserve that's needed on
19 that balance. The area where we historically had repeated
20 findings in the firm was the work done on that general reserve.
21 And so that this is summarizing the general reserve findings in
22 Part I of all of these respective reports.23 Q. And so when we've talked during your testimony about sort
24 of the problems with ALLL at KPMG, we're generally referring to
25 the general reserve problem?

J2edmid3

Rodriguez - direct

1 A. That is correct.

2 Q. OK. So what does this show about how many issuers within
3 Part I had deficiencies with respect to the general ALLL
4 reserve in 2014?

5 A. Ten.

6 Q. And just for a sense of context, approximately how many
7 financial issuers are inspected in a given year, plus or minus?

8 A. 10/11, somewhere in that neighborhood.

9 Q. And what about in 2015, how many of the KPMG financial
10 institution issuers had comments in the ALLL general reserve
11 deficiency area in Part I?

12 A. Five.

13 Q. So that's something like 50 percent-ish?

14 A. In that ballpark.

15 Q. What about in the first -- the initial 2016 inspection?

16 A. There were none.

17 Q. And I think you were saying that there were none in this
18 area but there was one in a different ALLL area, is that right?

19 A. Yes. There was one issuer in Part I that had a finding in
20 that specific reserve area, yes.

21 Q. So that was unrelated to the historic problem area?

22 A. That's correct, yes.

23 Q. When you compare that to how KPMG did in the replacement
24 set of 2016 financial institution inspections, how did it look?

25 A. There were six.

J2edmid3

Rodriguez - cross

1 Q. So something like 60 percent, then, of them?

2 A. That's correct.

3 Q. And what about in 2017?

4 A. There were five.

5 Q. You testified earlier that part of the reason the PCAOB
6 wanted to do replacement inspections was to see what, if any,
7 effect the confidential information that KPMG had might have
8 had on the inspections themselves. What does this show?

9 A. This shows that there is a stark difference between the
10 initial inspection in 2016 and the replacement issuers in 2016.

11 Q. Other than the possession of confidential information, can
12 you think of any other explanation for the dramatic difference?

13 MS. LESTER: Objection.

14 MR. OHTA: Objection.

15 THE COURT: Overruled.

16 You can answer if you have an understanding.

17 A. I can't.

18 MS. MERMELSTEIN: Nothing further, your Honor.

19 THE COURT: OK. Cross-examination, Ms. Lester.

20 MS. LESTER: Thank you, your Honor.

21 CROSS-EXAMINATION

22 BY MS. LESTER:

23 Q. Good afternoon, Ms. Rodriguez.

24 A. Hello.

25 Q. My name is Amy Lester, and I represent Mr. David

J2edmid3

Rodriguez - cross

1 Middendorf.

2 At the outset of your testimony, you talked a little
3 bit about the establishment or the creation of the PCAOB.

4 A. Yes.

5 Q. And you talked a little bit about the role that the PCAOB
6 has in overseeing public accounting firms. Do you remember
7 that testimony?

8 A. I do.

9 Q. One aspect of that role is that the PCAOB sets audit
10 standards that audit firms have to follow when they're
11 conducting their work; is that correct?

12 A. That's correct.

13 Q. And you're familiar with those audit standards and you use
14 them in your work, is that right?

15 A. I do.

16 Q. And are you familiar with an audit standard known as AS 3?

17 A. Yes.

18 Q. And that audit standard covers audit documentation, is that
19 right?

20 A. Yes.

21 Q. And audit documentation is basically a way of referring to
22 the workpapers that are the part -- part of the audit file,
23 correct?

24 A. Yes.

25 Q. And the audit documentation, the purpose of the

J2edmid3

Rodriguez - cross

1 documentation is to show the work that was done by the
2 auditors, correct?

3 A. Yes.

4 Q. And so AS 3 is the standard that governs what the
5 objectives are of the audit documentation, it defines audit
6 documentation, and it talks about the requirements for audit
7 documentation, is that right?

8 A. Yes.

9 Q. And included within those requirements is a section that
10 addresses the 45-day period that you have referenced in your
11 testimony, right?

12 A. Yes.

13 MS. LESTER: I would like to pull up government -- I'm
14 sorry, Defense Exhibit M176, which I believe is in evidence.

15 Q. Do you recognize this as AS 3?

16 A. Yes.

17 MS. LESTER: Please look at more than one page.

18 A. Yes. I see the introduction, yes.

19 Q. And if we could look at Section 15, which I think is on the
20 fifth page.

21 And that section talks about the 45-day requirement,
22 is that right?

23 A. Yes, that's correct.

24 Q. And it says that "A complete and final set of audit
25 documentation should be assembled for retention as of a date

J2edmid3

Rodriguez - cross

1 not more than 45 days after the report release date." Do you
2 see that?

3 A. Yes, I do.

4 Q. And the "report release date" refers to the date on which
5 the issuer, that is, the company that's being audited, releases
6 its financial statement and the accompanying audit opinion,
7 correct?

8 A. Correct.

9 Q. And so that date, the 45-day -- the end of the 45-day
10 period is known as the document completion date?

11 A. Yes, that's correct.

12 Q. OK. This standard -- Auditing Standard 3, didn't always
13 exist, did it?

14 A. I don't remember before it but that's correct.

15 Q. I'm sorry?

16 A. I don't remember when it came into effect but, yeah, that
17 would be correct.

18 Q. OK. And prior to its existence, there wasn't this 45-day
19 requirement, correct?

20 A. I don't believe so, that's correct.

21 Q. In fact, there was no specific deadline for finalizing the
22 audit workpapers, right?

23 A. I don't remember that. I don't remember.

24 Q. You don't remember either way?

25 A. I don't remember if there was a different requirement in

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Rodriguez - cross

1 effect at that time.

2 Q. The 45-day requirement is tied to the issuance of AS 3,
3 right?

4 A. Yes.

5 Q. And AS 3 -- if you look at the first page, you might know
6 this off the top of your head, but it indicates that the final
7 rule was released in 2004.

8 A. I see that, yes.

9 Q. You testified on direct that the documentation period is
10 primarily for cleaning up the workpapers; is that fair to say?

11 A. Yes, mm-hmm.

12 Q. And so the work is completed during the actual audit
13 time -- that is, throughout the year when the company is also
14 conducting its business and preparing its financial
15 statements -- that's finalized in time for the audit opinion to
16 be released with the financial statements themselves, and then
17 the documentation period is for assembling and editing the
18 workpapers, correct?

19 A. Yes. The audit standard allows for assembly of workpapers
20 in this 45 days, yes.

21 Q. And so the work, the actual substantive audit work, is
22 already completed?

23 A. Yes. All audit procedures are required to be completed
24 prior to that report release, yes.

25 Q. So in terms of the quality of the audit work itself, it

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Rodriguez - cross

1 should be completed when the report is actually issued?

2 A. Yes.

3 Q. And the documentation is meant to reflect the quality of
4 the audit?

5 A. Yes.

6 Q. Or not, I suppose?

7 A. Right.

8 Q. The PCAOB's official position was that it does not -- or is
9 that it does not give comments based on deficiencies in
10 documentation, correct?

11 A. So we do not generally write comments for deficiencies that
12 are solely documentation issues.

13 Q. And instead you use the documentation to determine whether
14 the work was actually performed that's set forth in the
15 documentation itself, right?

16 A. So documentation becomes complicated. There is different
17 kinds of documentation, so there is documentation where it is
18 easy to see, it is kind of summarizing the procedures that are
19 performed, seeing if you can get comfortable by looking at the
20 work, if it in fact happened. There are other types of
21 documentation that are the auditor's assessment for
22 reasonableness, or rationale decisions, so that documentation
23 is -- that's what becomes a little bit more difficult. That
24 has to be done by the report release date to support the work
25 that was done.

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Rodriguez - cross

1 Q. But ultimately, your assessment as a PCAOB inspector is
2 focused on the underlying work, correct?

3 A. It's focused on it, yes, ensuring that the audit work was
4 completed at that report release date.

5 MS. LESTER: I would like to show the witness only
6 what's been marked for identification as Government Exhibit
7 100, and pursuant to the procedure we discussed yesterday, we
8 will renumber it with a defense exhibit.

9 I will actually renumber it with Defense Exhibit 263.
10 So, it will be M263.

11 Q. Do you see that document? We could show you a couple of
12 pages, maybe.

13 (Pause)

14 A. Yes, I see it.

15 Q. Do you recognize this?

16 A. I do.

17 Q. And what is it?

18 A. This was information provided to audit committees about our
19 inspection process.

20 Q. When you say "our inspection process," you mean the PCAOB
21 inspection process?

22 A. Yes, I do.

23 Q. What is an audit committee?

24 A. The audit committees belong to various public companies.

25 It is a group of individuals who are responsible for the audit

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Rodriguez - cross

1 of the company, who approve the appointment of auditors, who
2 receive the communications of the auditors, and they're
3 responsible for overseeing that piece of it.

4 Q. And is this a document that was prepared by the PCAOB to
5 aid communications with audit committees of public companies?

6 A. This was actually information that was meant -- the
7 audience is audit committees, yes.

8 Q. So this was meant to be distributed to audit committees of
9 public companies by the PCAOB?

10 A. It's on our website and available, yes.

11 MS. LESTER: Your Honor, we offer Defense Exhibit
12 M263.

13 MS. MERMELSTEIN: No objection.

14 THE COURT: M263 is received.

15 (Defendant's Exhibit M263 received in evidence)

16 BY MS. LESTER:

17 Q. Audit committees are a part of the Board of Directors of
18 public companies, is that correct?

19 A. Yes.

20 Q. And they help advise the board on financial matters, right?

21 A. Every audit committee is different for companies but they
22 can do that, yes.

23 Q. Generally speaking?

24 A. Yes, mm-hmm.

25 Q. And another role that the audit committee can play is the

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Rodriguez - cross

1 liaison between a company's outside audit firm, the one that
2 independently inspects the firm's -- I'm sorry, the company's
3 financials, and the internal audit functions at a company, is
4 that right?

5 A. I'm not sure I understand you.

6 Q. So public companies in general have to perform their own --
7 they assemble their own financial statements, is that right?

8 A. Yes.

9 Q. And in doing so, they're checking those financial
10 statements to make sure that they're accurate?

11 A. Yes.

12 Q. But public companies also hire an outside accounting firm
13 or audit firm to double-check their work to make sure that the
14 financial statements are accurate, right?

15 A. To audit the work and provide the audit opinion, yes.

16 Q. Yes.

17 A. Yes.

18 Q. And so the audit committee might play a role in terms of
19 acting as a liaison between the company and its outside
20 auditors; is that fair to say?

21 A. Generally speaking, the audit firms do directly report to
22 audit committees, yes.

23 Q. OK. If I could direct you to page 5. There is an
24 executive summary in the beginning but then the actual page
25 number 5. There is a section in the middle there, Section 1.

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Rodriguez - cross

1 It is titled, "Assertions that characterize criticisms as
2 documentation deficiencies rather than as deficiencies in the
3 performance of procedures to obtain audit evidence."

4 This document generally, you said, was meant to be
5 distributed to audit committees, right?

6 A. Yes.

7 Q. And do you understand its purpose to be essentially talking
8 points for audit committees or question and answers in terms of
9 issues that their audit firm -- outside auditors might raise
10 with them giving them some perspective on those questions?

11 A. Yes.

12 Q. And so one of the things that the PCAOB is informing the
13 audit committees of are the fact that their outside auditors
14 might characterize the criticisms of the PCAOB in certain ways;
15 is that fair to say?

16 A. Yes.

17 Q. And so this is the PCAOB's explanation to the audit
18 committees of why they should take what their outside auditors
19 are telling them with a grain of salt, is that right?

20 A. Not "a grain of salt," but it's offering some insight into
21 some common responses we made here and what those may really
22 mean and how that compares to some of the common forms of
23 deficiencies we see identified, yes.

24 Q. And that's because one would expect, in the general course,
25 that an audit firm would communicate with the company that's

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Rodriguez - cross

1 being audited the general nature of the PCAOB's findings about
2 that audit, is that right?

3 A. They may, yes.

4 Q. Are they required to do that?

5 A. I'm not aware. I don't believe they are required but I am
6 not aware of that.

7 Q. But you have a general understanding that that tends to
8 happen?

9 A. It can happen.

10 Q. And so in that circumstance -- let's just look at the
11 language of the first paragraph of that section. It says: "In
12 addressing inspection report criticisms, firms' responses
13 sometimes characterize the deficiency in terms of audit
14 documentation. That is, firms sometimes assert or imply that
15 the firm performed procedures to obtain the necessary audit
16 evidence and that the criticism arises only because the firm
17 did not sufficiently document its procedures."

18 Do you see that?

19 A. I do. Yes.

20 Q. So is your understanding that this is communicating that
21 the auditor might say to the company, well, we did the work,
22 the PCAOB is just nitpicking because we didn't write it down in
23 the right way?

24 A. So, what this is referring to is at times we may have a
25 deficiency or identified deficiency around work that is not

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Rodriguez - cross

1 performed. And at times a firm may say, well, we just didn't
2 write that down, but it is not really about whether you wrote
3 down or not, it is about whether the work was performed. That
4 is explaining the differences in those two meanings.

5 Q. And the next sentence in the following paragraph is: "In
6 the Board's view, such assertions should be viewed with
7 skepticism." Is that right?

8 A. Yes.

9 Q. And the rest of that paragraph I think addresses what you
10 were just saying, that the PCAOB does not consider itself to be
11 giving comments based solely on documentation, it's looking to
12 whether the underlying work was actually performed?

13 A. Yes.

14 Q. And this was a document, as we already discussed, that's
15 distributed to audit committees by the actual PCAOB board,
16 right? This is a board document?

17 A. Yes. It's made available publicly on our website, yes.

18 Q. So this is an official document of the PCAOB; this is their
19 view?

20 A. Yes. It is a public release, yes.

21 Q. And this was a view that was shared by PCAOB inspectors,
22 correct?

23 A. Yes.

24 Q. And this view was expressed to audit firms, including KPMG,
25 correct?

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Rodriguez - cross

1 A. Yes.

2 MS. LESTER: We could take that down. Thank you.

3 BY MS. LESTER:

4 Q. You talked about the inspection process and the GNF
5 Program, which is the sixth largest accounting firms, right?

6 A. Yes.

7 Q. And at KPMG there was a specific group of inspectors who
8 were assigned to each of the GNF firms, correct?

9 A. Yes.

10 Q. And you worked on the KPMG team and you still do?

11 A. Yes.

12 Q. And you described how many members of the team there were
13 during the period at issue.14 Have there been changes in the makeup or role of
15 the -- the role -- I'm sorry, the makeup or the number of the
16 team members since there was a leak of confidential
17 information?

18 A. I'm not sure I follow the question.

19 Q. You described how many people are on -- were on the KPMG
20 inspection team at the time. You said -- we were talking, when
21 you were speaking with Ms. Mermelstein, it was largely 2015 to
22 2016, correct?

23 A. Yes.

24 Q. Have there been any changes in terms of the number of
25 people assigned to KPMG since that time?

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Rodriguez - cross

1 A. Like today? I don't know if I am allowed to ask a
2 question, but do you mean where our team stands today?

3 Q. Correct.

4 A. There has been changes to our program, yes.

5 Q. And those changes are a result of the events that gave rise
6 to this case?

7 A. I don't -- I don't have any insight as to whether or not
8 they are, no.

9 Q. Can you describe some of the changes?

10 A. We're -- one of the changes is we used to look at the
11 inspections of Grant and BDO on a little bit of a delayed
12 schedule, so we would start the Big Four and then we will go to
13 Grant and BDO in the June and July timeframe, and currently we
14 are looking now at everyone at the same time. They start
15 concurrent. We pretty much all start at the same time. So the
16 teams have -- the team members are distributed a little bit
17 differently to accommodate for that.

18 Q. And have any people -- specific team members been removed
19 from the KPMG team since the timeframe you were discussing
20 earlier as of now?

21 A. People have left and rotated off. They've left for a
22 variety of reasons. The team that inspected in 2017 is not
23 necessarily the team that did '18, or there are changes every
24 year on our team.

25 Q. And you spoke about access to planning information and the

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Rodriguez - cross

1 like. Has the PCAOB implemented any changes with respect to
2 the way it deals with planning information and access to that
3 information?

4 A. Yes, we have.

5 Q. And what are those changes?

6 A. Access is removed if you are no longer on the current team.
7 It's -- previously that access may or may not have been
8 removed. It is now currently removed.

9 Q. Any other changes related to access of information?

10 A. Not that's coming to my -- there may be. I just don't
11 remember them right now.

12 Q. You spoke about the planning process and looked at that
13 large spreadsheet, Government Exhibit 102. There were a lot of
14 columns on that spreadsheet, fair to say?

15 A. Yes, there are.

16 Q. But much of the information that was on that spreadsheet, a
17 fair amount of it is provided by the audit firm itself,
18 correct?

19 A. There's a lot of information that comes from the firm on
20 that spreadsheet, yes.

21 Q. And some of the information on the spreadsheet is from
22 publicly available sources, is that right?

23 A. There are some of it that is publicly available, yes.

24 Q. And, in general, I think what you testified is that the
25 object of all of that planning and the data in that spreadsheet

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Rodriguez - cross

1 is to identify risk factors, fair to say?

2 A. Yes.

3 Q. And when the PCAOB selects issuers to audit, it's looking
4 for high risk, right?

5 A. That is a piece of our inspection program, yes, it is.

6 Q. And so this is not unknown to the firms that are being
7 inspected, correct, that the PCAOB is identifying high risk?

8 A. I don't believe it is, no. I think they are aware of that,
9 yes.

10 Q. And, in fact, the PCAOB encourages the audit firms
11 themselves to identify their high risk clients?

12 A. Yes. We speak in terms of risk as a whole, not the
13 specific components with which we are evaluating the risk but
14 high risk as a whole, yes.

15 Q. And in terms of particular areas or topics of interest to
16 the PCAOB in a particular inspection cycle, those are things
17 that are also discussed with the firms, correct, generally
18 speaking?

19 A. Once we notify of an inspection, there may be certain
20 things that we do communicate that we're gathering information
21 on and there may be other things that we don't. It just kind
22 of depends on what we're looking at in any given year. So some
23 of it may be public, some of it may be not disclosed to them.

24 Q. You mentioned that in addition to the risk-based inspection
25 targets, the PCAOB also selects a few random audits to look at,

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Rodriguez - cross

1 correct?

2 A. Yes.

3 Q. And those random inspections are meant to -- withdrawn.

4 The firms, within their own internal monitoring or
5 inspection processes, are, to your knowledge, looking at audits
6 that have particular problems or risks, correct?

7 A. Yes.

8 Q. In other words, the firms themselves are identifying the
9 same types of issues that the PCAOB is looking at when it's
10 making inspection determinations, selections?

11 A. I --

12 Q. That was a bit of a poor question. I will reword it.

13 Firms -- you were aware that firms such as KPMG have
14 internal monitoring programs, right?

15 A. Yes.

16 Q. And in selecting the audits to be included in those
17 internal monitoring programs, the firms are selecting based on
18 oftentimes a particular risk factor?

19 A. At times, yes.

20 Q. And that risk factor might overlap with a risk factor
21 that's also looked at by the PCAOB in making its internal
22 selection decision?

23 A. Yes, it could.

24 Q. You talked about the notification to the firms of the fact
25 that a particular audit has been selected for inspection. Do

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Rodriguez - cross

1 you remember that testimony?

2 A. I do.

3 Q. And you said in general the firms receive two to four
4 weeks' notice that a particular audit is going to be inspected?

5 A. That's correct, yes.

6 Q. But prior to that, at least during the time period you were
7 discussing with Ms. Mermelstein, the PCAOB would send notice to
8 KPMG of the general geographic location where an inspection
9 might take place, correct?

10 A. Yes, we do.

11 Q. And that was for planning purposes?

12 A. Yes. To put an inspection on, it's very difficult to
13 coordinate resources, so we would provide the firm a list of
14 the geography where we would be and the time but not the
15 issuers.

16 Q. And in addition to the geographic location, so, for
17 example, would it be the home office of KPMG, the closest home
18 office? How specific was the geographic information?

19 A. I'm trying to remember just because we haven't done that
20 schedule in awhile. I can't remember if it was a -- if it was
21 this unit or it was the actual office location. I don't
22 remember that.

23 Q. And there was a description, was there not, of the type of
24 issuer that would be inspected? So, for example, it would say
25 "financial services" if it was a bank or a financial

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Rodriguez - cross

1 institution?

2 A. There were only certain ones where we gave that information
3 if there was some reason that they would have a specialized
4 resource there, so we did not provide all industry information.
5 Only I think financial service and I think broker-dealer was on
6 that. If they were, we would also coordinate their inspections
7 for them also. So if we were going to be in a city, we would
8 let them know that the broker-dealer was coming also.

9 Q. OK. But if it was a financial institution or a bank, the
10 PCAOB would have provided advance notice of the general
11 geographic location?

12 A. Yes.

13 Q. So in the normal course, you talked about the planning that
14 takes place prior to the actual inspection and that the PCAOB
15 receives access to the workpaper files -- I believe that's
16 known as the e-audit file, correct?

17 A. Yes, mm-hmm.

18 Q. A week ahead of actually arriving on site for the
19 inspection?

20 A. Yes, that's customary.

21 Q. And then there is a kickoff meeting or opening meeting --

22 A. Yes.

23 Q. -- once the inspectors arrive?

24 A. Yes, or sometimes it happens -- it was once the inspectors
25 arrive. We did move to a model, for making the most use of

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Rodriguez - cross

1 that time in the field, to doing it the Thursday or Friday
2 before, one of the two.

3 Q. Very close in time, if not on the day that they were --

4 A. Yes, absolutely.

5 Q. And so if the firm is notified, say, four weeks before the
6 inspectors actually arrive on site, then they have four weeks
7 to prepare for that opening meeting, correct?

8 A. About, yes.

9 Q. But sometimes they may only have two weeks if the PCAOB
10 only gave them two weeks' notice, right?

11 A. That could happen, mm-hmm.

12 Q. And so the time -- the preparation time that the firm has
13 can vary considerably, correct?

14 A. Generally in a year, it's a three- to four-week window. At
15 times, if there was a scheduling issue when we were working
16 with the firm to figure out timing, location issues, what have
17 you, that is when it would kind of get closer to the two weeks,
18 but generally was not there. That's the ranges. It was
19 almost, I don't want to say with certainty, but I think
20 extremely high end of the issuers was three to four weeks
21 pretty consistently.

22 Q. OK. But it could vary, correct?

23 A. It could vary, yes.

24 Q. You mentioned that one reason why the PCAOB doesn't give
25 notice before the end of the 45-day period is that you want to

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Rodriguez - cross

1 have a picture of what the workpapers look like when they are
2 locked down at the end of the documentation period, is that
3 correct?

4 A. That's correct, yes.

5 Q. The PCAOB has the ability to inspect an audit firm under
6 its supervision at any time, correct?

7 A. I don't know that. The standard -- the statute could say
8 that. I'm not sure.

9 MS. LESTER: May I approach, your Honor?

10 THE COURT: Yes.

11 Q. If you could just read the bottom portion to yourself and
12 then look up when you are finished.

13 (Pause)

14 A. OK.

15 Q. Does that refresh your recollection that the board actually
16 has the authority to conduct surprise inspections on its own
17 initiative?

18 A. I think that's the first I've ever read this section of it,
19 and I don't know that I know that that is what this section
20 means.

21 Q. OK. You can put that to the side.

22 A. OK.

23 Q. Now, after the on-site inspection is completed, the
24 inspectors have a closing meeting where they give their
25 informal view to the engagement team of how the inspection went

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Rodriguez - cross

1 generally; is that fair to say?

2 A. We refer to them as status meetings just because sometimes
3 it kind of continues on if we're working through the comment
4 form process, and in those meetings they will communicate if
5 there was any comment forms and some general commentary, yes.

6 Q. That was going to be my next question. So that's the time
7 when the engagement team learns, generally speaking, whether
8 the PCAOB is likely to have comments on the audit, correct?

9 A. At that time, they will learn what our determination was at
10 the end of the inspection as to whether we were going to do it.
11 But during the inspection, we are talking about at some point
12 in that inspection whether we believe this could be a comment
13 form as we're working toward that status meeting, yes.

14 Q. And there are often informal discussions during that
15 process that you just described where the engagement team and
16 the inspectors will have a discussion about whether a comment
17 is actually warranted, correct?

18 A. Yes.

19 Q. And sometimes the inspectors will be shown something by the
20 engagement team, perhaps a workpaper or a reference to some
21 other aspect of a workpaper, and they will agree that in fact
22 no comment is warranted, correct?

23 A. Yes.

24 Q. And even if at the end of the actual on-site inspection the
25 team is inclined to include a comment in its inspection summary

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Rodriguez - cross

1 memo, that doesn't necessarily mean that that comment
2 ultimately makes it into the report, correct?

3 A. Once it's in the inspection summary memorandum and we're
4 talking about issued comments, the vast majority of those end
5 up in the report, because that would be after the deliberation
6 back and forth with the engagement teams. There are instances
7 where that may not happen. If additional documentation is
8 provided in response to the comment form, that could happen.
9 It's just not common.

10 Q. But it does happen sometimes that comments that are
11 included in the inspection summary memos are not actually in
12 Part I of the report, correct?

13 A. That is possible, yes.

14 Q. That process, the process of the back and forth between the
15 firm itself and the inspection team, takes place not only in
16 person but also through discussions after the inspection team
17 has left the site, correct?

18 A. That is possible if they are still working on an issue for
19 us, yes.

20 Q. And then once the PCAOB inspectors return to their home
21 office and start the report writing process, there is a
22 discussion within the team itself about whether comments should
23 be issued, correct?

24 A. When we're drafting the report, we're working off of issued
25 comment forms.

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Rodriguez - cross

1 Q. But there is a discussion within the team -- in other
2 words, comments aren't just written by the inspectors on the
3 ground, they have to be approved at a higher level; is that
4 fair to say?

5 A. Yes. They go through a review process prior to issuance,
6 yes.

7 Q. And so it could be the case that a supervisor, a team lead,
8 for example, could disagree with the inclusion of a comment --
9 the appropriateness of the inclusion?

10 A. I think I'm confused on if you are talking about issuing
11 the comment form or inclusion in the report.

12 Q. Well, let's start with issuing a comment form.

13 Issuing a comment form would be more likely to just be
14 the inspection team's decision, correct?

15 A. No. The inspection team will only draft the comment form,
16 and then it has to go all the way through the global team lead
17 prior to being issued.

18 Q. So even those comments have to be approved at a higher
19 level?

20 A. Yes, they do.

21 Q. And then for actual inclusion in the report, those have to
22 be approved again?

23 A. That's correct, yes.

24 Q. And sometimes there are differences of opinion amongst
25 members of the inspection team on certain issues, including,

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Rodriguez - cross

1 perhaps, the application of an accounting or auditing rule,
2 correct?

3 A. There could be.

4 Q. Could I show you what's been marked for identification as
5 M245.

6 MS. LESTER: If you could show the first few pages,
7 please, Ms. O'Connor.

8 (Pause)

9 Q. Do you recognize this document, Ms. Rodriguez?

10 A. Yes. It's the inspection manual.

11 Q. When you say "the inspection manual," what does that mean?

12 A. This sets forth the guidelines over our inspections
13 process.

14 Q. For the PCAOB?

15 A. Yes.

16 MS. LESTER: We offer M245.

17 MS. MERMELSTEIN: No objection.

18 THE COURT: M245 is received.

19 (Defendant's Exhibit M245 received in evidence)

20 BY MS. LESTER:

21 Q. If I could direct your attention to Section 900.

22 Now, Chapter 9, of which Section 900 is a part, is
23 titled, "Consultation protocol and differences of opinion."

24 So, is it fair to say this section is about how to
25 handle differences of opinion within the inspection team,

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Rodriguez - cross

1 should they arise?

2 A. That's a piece -- that is included within that section,
3 yes.

4 Q. Yes. And now looking at 900.6. This section is titled,
5 "Resolving differences of opinion," correct?

6 A. Yes.

7 Q. The first two sentences say: "Differences of professional
8 opinion related to accounting, auditing, and reporting matters
9 may arise during both the conduct of an inspection, as well as
10 during formal consultations. Such differences could also occur
11 related to judgments regarding whether to communicate oral
12 observations, issue comment forms, include issues in reports,
13 or other matters of significance."

14 And this is what we were just talking about a moment
15 ago, correct?

16 A. Correct, yes.

17 Q. And that is that this manual recognizes that it's a natural
18 part of the process to have differences of opinion that may
19 need to be resolved amongst the inspection team members,
20 correct?

21 A. It's not common but it certainly happens.

22 Q. And this lays out a protocol for how to handle that,
23 correct?

24 A. Yes.

25 Q. And one of the things in the second sentence that's listed

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Rodriguez - cross

1 specifically is what we were talking about, that is, whether to
2 issue comment forms or include issues in reports, right?

3 A. Yes.

4 MS. LESTER: OK. You can take that down. Thank you.

5 Q. Now, you spoke about the different parts of the actual
6 inspection reports, the Part I versus Part II, and Part II you
7 said may not become public, correct?

8 A. Yes.

9 Q. But Part I, even though it is public, the names of the
10 companies that are the subject of the audits are never made
11 public, correct?

12 A. To my knowledge, no, they're not.

13 Q. They're simply referred to by issuer A, issuer B, right?

14 A. Correct. Yes, correct.

15 Q. So members of the public, even though the reports are
16 publicly available on your website, do not know what the
17 companies are, correct?

18 A. That's correct.

19 Q. You also talked about the timing of the reports' release
20 and specifically looked at Government Exhibit 1359.

21
22 MS. LESTER: If we could put that up? That is in
23 evidence.

24 (Pause)

25 Sorry. Technical snafu.

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Rodriguez - cross

1 Q. You have reviewed this document, I'm sorry, this chart with
2 Ms. Mermelstein, correct?

3 A. I have, yes.

4 Q. And were you involved in the preparation of this chart?

5 A. Yes.

6 Q. And that was when you were preparing with the government
7 for your testimony?

8 A. Yes. I reviewed all the data within that chart, yes.

9 Q. And so this has the dates of release of the various reports
10 for all of the GNF firms, correct?

11 A. It does, yes.

12 Q. And in general, it's fair to say that the report is
13 released certainly not until at least a year after the actual
14 inspection, right?

15 A. I believe so, generally, yes. About 10 months, 12 months,
16 13 months, somewhere in that frame, yes.

17 Q. So some are even longer than that?

18 A. Could be, mm-hmm.

19 Q. And the inspection year itself is looking at audits for
20 fiscal years that ended in the prior year most typically,
21 right? Let me -- I think you agree, but let me just explain it
22 better for the jury so they understand what we're talking
23 about.

24 Most public -- or many public companies are on the
25 regular calendar year in terms of their fiscal year, right?

J2edmid3

Rodriguez - cross

1 A. Right. Most have a 12/31 year end, yes.

2 Q. So at the end of 2012 would be the end of the 2012 fiscal
3 year?

4 A. Yes.

5 Q. And then the 2013 inspection year would be looking at those
6 2012 financials, correct?

7 A. For the most part, yes.

8 Q. And so then the report comes out in 2014, according to this
9 chart, all of that year, all of the reports came out in 2014?

10 A. Yes.

11 Q. So that's relating to a fiscal year that at that point is a
12 year-and-a-half to two years ago?

13 A. Something around that timeframe, yeah. Mm-hmm.

14 Q. If we look at Grant Thornton, in particular, it's -- the
15 release of its reports was often, at least in 2014, 2015, was
16 two years after the inspection year, right?

17 A. I'm surveying this really quickly.

18 (Pause)

19 That's what it would show on this report, yes, on this
20 schedule, yes.

21 MS. LESTER: We can take that down. Thank you.

22 Q. You also looked at Government Exhibit 1357. Do you
23 remember this exhibit?

24 A. I do.

25 Q. Did you also have a role in preparing this exhibit for the

J2edmid3

Rodriguez - cross

1 government?

2 A. I reviewed the document, yes.

3 Q. And this exhibit shows the number of audits that received
4 Part I comments, correct?

5 A. That is correct, yes.

6 Q. And if you notice -- you already went over this with
7 Ms. Mermelstein, but in 2012, for example, Ernst & Young had a
8 higher number of deficient audits than KPMG, correct?

9 A. That is correct, yes.

10 Q. And so did Grant Thornton?

11 A. Yes, that is correct.

12 Q. And so did PwC?

13 A. Yep. Yes, that is correct.

14 Q. And in 2013, Ernst & Young again had a higher number than
15 KPMG, correct?

16 A. That is correct, yes.

17 Q. And that was 28 in that year?

18 A. That is correct.

19 Q. And in the following year, KPMG had 28, correct?

20 A. Yes.

21 Q. Have you heard of the phrase "Too big to fail"?

22 A. I have.

23 Q. Have you heard it in the context of the PCAOB not issuing
24 more than 28 comments to an audit firm?

25 A. I've never heard that, no.

J2edmid3

Rodriguez - cross

1 Q. So there is no cap on the number of audits that can be
2 deemed failed by the PCAOB?

3 A. No, I've never heard that before.

4 (Continued on next page)

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J2E5mid4

Rodriguez - cross

1 BY MS. LESTER:

2 Q. And you have never been told that 28 is that number?

3 A. Never.

4 Q. Are you aware of whether there has ever been a finding of
5 more than 28?

6 A. I don't know, no.

7 Q. There is no number higher than 28 on this sheet, correct?

8 A. On this sheet? No, there is not.

9 Q. The Big Four firms are the first four firms listed on this
10 chart, correct, reading from left to right?

11 A. Yes, they are. Yes.

12 Q. And Grant Thornton and BDO are slightly smaller firms,
13 correct?

14 A. They have less issuers. Yes, they are. Yes.

15 Q. Is it also the case that the PCAOB inspects fewer audits
16 from those firms because they have fewer issuers?

17 A. Yes.

18 Q. So, for Grant Thornton, for example, which in 2012 had 22
19 deficient audits, do you know out of how many actual inspected
20 audits that was?

21 A. I don't. No.

22 Q. Would you expect it to be a lower number than the number
23 inspected for the Big Four?

24 A. I would. Yes.

25 Q. Do you know by how many you expect it to be lower?

J2E5mid4

Rodriguez - cross

1 A. No, I do not. No.

2 Q. If I told that you in general -- I think you have already
3 testified that the number for The Big Four was around 50?

4 A. In its 50s, yes.

5 Q. And the number for Grant Thornton and BDO, if it was in
6 the, let's start with BDO, 20 to 30 range, would that sound
7 correct to you?

8 MS. MERMELSTEIN: Objection to the request for
9 speculation, your Honor.

10 THE COURT: If you have knowledge of it you can
11 understand, as long as you are not speculating.

12 THE WITNESS: I honestly don't remember.

13 BY MS. LESTER:

14 Q. But you do know that the number of audits inspected for BDO
15 and Grant Thornton is lower than the number for the big four,
16 correct?

17 A. Yes.

18 Q. Therefore, the number of deficient audits depicted on this
19 chart would be a larger percentage because it's a lower number
20 of audits, correct?

21 A. Yes. I believe so, yes.

22 Q. You can take that down. Thank you.

23 You looked at one of the inspection reports from KPMG
24 with Ms. Mermelstein and I would like to take you through some
25 of the sections of one of the reports. We will just use as an

J2E5mid4

Rodriguez - cross

1 example Government Exhibit 6 which is in evidence. This is for
2 the 2017 inspection and the report was issued this January,
3 correct?

4 A. Yes.

5 Q. Let's look at page 2 of the report, please.

6 Now, this is the executive summary. This is sort of
7 the overview of the year's inspection fair to say, correct?

8 A. Yes, it is.

9 Q. Now let's look at the third paragraph beginning with: *The*
10 *Board cautions...* I am just going to read this.

11 *The Board cautions against using the number of audits*
12 *with deficiencies in the public portion of a report to draw*
13 *conclusions about the frequency of deficiencies throughout the*
14 *firm's practice. The audits to be reviewed are most often*
15 *selected based on perceived risk and not through a practice*
16 *designed to identify a representative sample that could be*
17 *extrapolated to the firm's entire practice. The portions of*
18 *these audits that are reviewed often involve the most risky*
19 *areas of the financial statements. Thus, much of the audit*
20 *work that is inspected presents, in the inspection team's view,*
21 *a heightened possibility of auditing deficiencies.*

22 So, this is part of what you were talking about with
23 Ms. Mermelstein of what the PCAOB is doing in its selection
24 process, it's looking for the riskiest audits, correct?

25 A. The largest part of our inspections process, yes.

J2E5mid4

Rodriguez - cross

1 Q. And so that limits the use, in some sense, of the report
2 itself because the pool from which the audits are drawn are
3 supposed to be, at least a large portion of them, the riskiest
4 audits of the firm?

5 A. So, what it is saying is you can't take the number, the
6 percent that comes out, 22 percent, and put 22 percent across
7 the whole practice, but it does give you insight into the
8 quality of the audit work being done by the firm. So.

9 Q. But the Board itself is cautioning readers of this report,
10 which would include members of the public, correct --

11 A. Yes. Absolutely.

12 Q. -- that they should not use the number of audits with
13 deficiencies, in other words the number of audits included in
14 Part I, correct?

15 A. Yes.

16 Q. To draw conclusions about the frequency of deficiencies
17 throughout the firm's overall practice?

18 A. Right. Yes.

19 Q. Let's look at page 5, starting with the two sentences and
20 the paragraph: *Inspections are designed...* I'm sorry, there
21 are two paragraphs that start that way, it is the third
22 paragraph, please.

23 So, the first two sentences: *Inspections are designed*
24 *to identify deficiencies in audit work and defects or potential*
25 *defects in the firm's system of quality control. This focus on*

J2E5mid4

Rodriguez - cross

1 deficiencies and defects necessarily carries through to
2 inspection reports and, therefore, the reports are not intended
3 as balanced report cards or overall rating tools.

4 So this is another, essentially, disclaimer in terms
5 of what people should draw from the report, correct?

6 A. Yes. It is a clarification on that, yes.

7 Q. And it says the reports are not intended as balanced report
8 cards.

9 A. Because it is not reviewing every aspect of it. We have
10 focused reviews on certain pieces so it is not a complete
11 statement of every aspect of their quality control. That is
12 correct.

13 Q. Is a fair interpretation of this language that the general
14 public should not draw overall conclusions about the quality of
15 a firm's audit work based simply on their performance in a
16 particular year's inspection?

17 A. Can you say that one more time?

18 Q. I will read my question. I don't know if I can say it
19 again:

20 Is a fair interpretation of these two sentences that
21 the general public, who may be reading this report that is
22 publicly available, should not draw overall conclusions about
23 the quality of a firm's audit work based simply on their
24 performance in this particular year's inspection?

25 A. Yes. I think so, yes.

J2E5mid4

Rodriguez - cross

1 Q. I think you already looked at this language with
2 Ms. Mermelstein but just in case not, on page 6, the final
3 paragraph, the carryover paragraph -- sorry, I mean on page 6,
4 that an audit deficiency, there is a sentence there that says
5 that an audit deficiency reached the level of significance to
6 be included in Part 1.A of an inspection report does not mean
7 that the financial statements are misstated or that there are
8 undisclosed material weaknesses in ICFR.

9 Just to remind the jury, ICFR refers to?

10 A. Internal Control Financial Reporting.

11 Q. So, this sentence is telling investors, who might be
12 reading this report, that they shouldn't assume that the
13 financial statements are unsound of the companies that are
14 being audited, correct?

15 A. Yes.

16 Q. In fact, the investors can't even tell what companies those
17 are, right, because the names aren't included in the inspection
18 report?

19 A. Right. An individual issuer is not identifiable.

20 Q. Right.

21 But this means, this sentence means that even if an
22 audit has a deficiency such that it is included in Part I, that
23 doesn't necessarily mean that the company has to take steps
24 such as a restatement of its financials, correct?

25 A. So, the company does not necessarily have to modify

J2E5mid4

Rodriguez - cross

1 financials. There are steps the auditor should take in order
2 to support the opinion they in fact issued to determine that
3 there are no errors in the financials.

4 Q. So it is directed more towards the auditor's work, not the
5 significance of the financial statements?

6 A. Yes. Our report addresses the auditor's work.

7 Q. Thank you. You can take that down. Thank you,
8 Ms. O'Connor.

9 Your Honor, if this is a convenient time, it might
10 make sense to break for lunch before I get into a new topic.

11 THE COURT: Okay.

12 I was wondering if we might be able to get by with a
13 45-minute lunch in the hope that we could finish the witness
14 today, if possible. Would you guys be okay with a 45-minute
15 lunch do you think?

16 THE JURY: Yes.

17 THE COURT: Great. So, it is 12:52. Let's try to be
18 back and start at --

19 JUROR: 1:35?

20 THE COURT: 1:35. Thank you.

21 1:35. Thanks. Have a good lunch. Please leave your
22 notepads on your chairs and we will see you at 1:35.

23 (Continued on next page)

J2E5mid4

Rodriguez - cross

1 (Jury not present)

2 THE COURT: You can go ahead and step out.

3 THE WITNESS: Thank you.

4 (witness steps down)

5 THE COURT: You may be seated.

6 I just wanted to touch base on timing. How are we?

7 Do you have a sense of how much longer?

8 MS. LESTER: I think we will finish today. I can't
9 speak for Mr. Ohta who is also cross-examining, but I can't
10 imagine my cross would go beyond mid-afternoon.

11 THE COURT: Okay.

12 Do you have any sense, Mr. Ohta?

13 MR. OHTA: I am going to be so good I will be done by
14 5:00.

15 THE COURT: Okay.

16 Anything else anybody needed to talk about?

17 MS. MERMELSTEIN: No, your Honor.

18 THE COURT: Okay. Have a good lunch.

19 (Luncheon recess)

20 (Continued on next page)

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J2E5mid4

Rodriguez - cross

1 A F T E R N O O N S E S S I O N

2 1:45 p.m.

3 (Trial resumed; jury not present)

4 THE COURT: All the jurors are here. Are we ready?

5 (Jury present)

6 THE COURT: You may be seated.

7 Good afternoon, folks.

8 THE JURY: Good afternoon.

9 THE COURT: Continuing with cross-examination.

10 Ms. Lester, you may proceed.

11 MS. LESTER: Thank you, your Honor.

12 BY MS. LESTER:

13 Q. Ms. Rodriguez, on your direct testimony I believe you
14 testified about meetings that happened periodically between
15 members of the PCAOB and members of KPMG?

16 A. Yes.

17 Q. And you said those happened approximately once a month?

18 A. Yes, they did.

19 Q. You participated in at least some of those meetings,
20 correct?

21 A. Yes, I did.

22 Q. And was Mr. Middendorf present at least some of those
23 meetings that you attended?

24 A. Yes, he was.

25 Q. And there were also other members of KPMG's national office

J2E5mid4

Rodriguez - cross

1 who attended as well, correct?

2 A. Correct.

3 Q. Including usually the vice chair of the audit department?

4 A. Yes.

5 Q. And that would be at different times, either Jim Liddy or
6 Scott Marcello?

7 A. Yes. When I was involved in the firm I think there was
8 only once that Jim Liddy was there but, yes, it was
9 transitioning to Scott Marcello, yes.

10 Q. And that was the person to whom David Middendorf reported,
11 correct?

12 A. Yes.

13 Q. Is it fair to say that some of the meetings were tense?

14 A. I don't know that I would categorize them as tense based on
15 my memory.

16 Q. Was there active discussion of some of the difficulties
17 that KPMG was facing in terms of its audits?

18 A. Yes.

19 Q. And, was there sometimes disagreement in terms of the most
20 effective approach between KPMG staff and PCAOB staff?

21 A. Disagreements don't pop out in my memory on that. There
22 certainly could have been, I am just not remembering them.

23 Q. Okay. We will look at some of the meetings.

24 A. Okay.

25 Q. Were you aware generally that there had been, that KPMG had

J2E5mid4

Rodriguez - cross

1 been informed by the PCAOB that it had a "tone at the top"
2 problem?

3 A. Yes, I have.

4 Q. And, in fact, that was included, I believe, in a Part II
5 finding about the firm?

6 A. Yes.

7 Q. And "tone at the top" means that the PCAOB did not think
8 that the leadership of KPMG were doing a good job at sending
9 the right message to KPMG staff. Is that fair to say?

10 A. In summary, yes.

11 Q. And, the message that the PCAOB was communicating in
12 telling KPMG that they had a "tone at the top" problem, was
13 that things should change from the top down?

14 A. I don't remember. Every year is a little bit different,
15 observations are a little bit different, but the general
16 context or the purpose of that section is talking about issues
17 at the top of the firm; yes.

18 Q. And do you know, before the time when you started attending
19 the PCAOB KPMG monthly meetings, do you know whether high-level
20 KPMG personnel like the vice chair of audits were in the habit
21 of attending those meetings?

22 A. When I started on the firm that was -- they were attending
23 the meeting. I have heard stories prior to me being on the
24 team.

25 Q. That they had not attended in prior years?

J2E5mid4

Rodriguez - cross

1 MS. MERMELSTEIN: Objection to a question that is
2 calling for hearsay, your Honor. The witness just said she has
3 no personal knowledge but heard stories.

4 THE COURT: Sustained.

5 BY MS. LESTER:

6 Q. And, at those monthly meetings, is it fair to say that KPMG
7 would often conduct presentations of its various audit quality
8 efforts including internal monitoring programs?

9 A. Yes. That is, yes.

10 Q. And often times that would include like a PowerPoint
11 presentation that they would do during the meeting for the
12 PCAOB staff in attendance, correct?

13 A. That's correct. Yes.

14 Q. And I think you have mentioned on your direct that often
15 times the agenda included discussion of inspections results if
16 it was in the middle of the inspection cycle, right?

17 A. That is correct. Yes.

18 Q. And, as part of the general discussion about KPMG's
19 internal programs, did KPMG also discuss with the PCAOB the
20 results of those programs and how successful they were or
21 unsuccessful?

22 A. Yes. At times they would share their internal
23 observations.

24 Q. And, did the PCAOB ask KPMG to report back on certain
25 aspects of the programs? So, for example, they would say at

J2E5mid4

Rodriguez - cross

1 the next meeting we would like to hear about X?

2 A. Oh, yes. Uh-huh.

3 Q. And in those meetings it was clear, was it not, that the
4 PCAOB was aware that one of the things that KPMG was doing was
5 hiring former PCAOB employees, correct?

6 A. Yes, we were aware. Uh-huh.

7 Q. And including Brian Sweet?

8 A. Yes.

9 Q. And Louann Sakala?

10 A. Yes.

11 Q. And Ms. Sakala's speciality was root cause analysis,
12 correct?

13 A. That I believe -- to my memory that is where she was
14 working within the firm, yes.

15 Q. What is root cause analysis?

16 A. So, root cause analysis is the process by which the firms
17 would go through when a deficiency is identified, in trying to
18 find out what the actual cause of the deficiency is, what the
19 root cause is, in order to effectively design programs or
20 actions that they call remedial actions to address it.

21 Q. So, it is looking at the underlying issues that are causing
22 audit quality problems, correct?

23 A. Yes.

24 Q. And that was someone that KPMG had hired away from the
25 PCAOB to help them address that issue?

J2E5mid4

Rodriguez - cross

1 A. I believe on my memory, yes, that is what Louann did.

2 Q. Mr. Sweet, did you know him when he was at the PCAOB?

3 A. I did.

4 Q. And he was a banking inspector largely, correct?

5 A. That's correct, yes.

6 Q. So that was sort of his subject matter expertise?

7 A. Yes.

8 Q. And, fair to say he was very well regarded at the PCAOB?

9 A. Yes, he was.

10 Q. Would you say he was a, quote, super star?

11 A. He was definitely known as a very high-quality inspector,
12 yes.

13 Q. And, in fact, when he had been hired by KPMG, do you
14 remember at one of the monthly meetings Paul Bijou remarked
15 that?

16 MS. MERMELSTEIN: Objection to hearsay, your Honor.

17 MS. LESTER: It is not for the truth, your Honor, but
18 I can move on.

19 THE COURT: Okay.

20 BY MS. LESTER:

21 Q. In those internal monitoring programs that KPMG was running
22 itself, there is nothing improper about such programs, correct?

23 A. The existence of an internal monitoring program itself is
24 not inappropriate, no.

25 Q. And, in fact, the auditing standards, including AS 3,

J2E5mid4

Rodriguez - cross

1 recognize that there may be times in which an auditor conducts
2 an internal review of its work papers, correct?

3 A. I don't remember that but I have no reason to believe
4 that's not in the standard. I am sure it is.

5 Q. Okay. We can look at the standard.

6 A. Okay.

7 Q. If you would please pull up M-176?

8 This is S 3, we looked at it a moment ago. Let's look
9 at Section 3 on the second page. The first sentence says:
10 *Audit documentation is reviewed by members of the engagement*
11 *team performing the work and might be reviewed by others.*

12 Do you see that?

13 A. Yes, I do.

14 Q. And it says: Reviewers might include, and it gives some
15 examples.

16 A. Uh-huh.

17 Q. "E" is internal and external inspection teams that review
18 documentation to assess audit quality and compliance with
19 auditing and related professional practice standards,
20 applicable laws, rules and regulations; and the auditor's only
21 quality control policy.

22 Do you see that?

23 A. I do. Thank you.

24 Q. So, is that an example where AS 3 specifically recognizes
25 that internal reviews would fall within its guidelines?

J2E5mid4

Rodriguez - cross

1 A. Yes.

2 Q. And AS 3 also contemplates that in the course of such an
3 internal review there might be a need for additional audit
4 work, that is, it might be discovered during the review that
5 there was not work performed that actually does need to be
6 performed?

7 A. That is correct, yes.

8 Q. And if that in fact happens, there is a separate auditing
9 standard that covers how to document that additional work,
10 correct?

11 A. Correct.

12 Q. And I believe you referenced that on your direct testimony
13 that is AU 390?

14 A. Yes. That's correct.

15 Q. If, during an internal review the review team realizes that
16 some work was actually done so there doesn't need to be
17 additional work but it wasn't included in the documentation and
18 it is still within the documentation period, that is the 45-day
19 period after the close of the audit, in your view is it
20 permitted under AS 3 to add a notation of that work that
21 already took place?

22 A. If you clearly identify that these are procedures being
23 performed subsequent to the report released date, yes, you can
24 add that to your workpapers.

25 Q. So, in other words, as long as it is clear when that

J2E5mid4

Rodriguez - cross

1 information is added?

2 A. When the AU 390 -- when the information is added, why it
3 was added that information, yes.

4 Q. But are you talking about AU 390?

5 A. We are talking about them a little bit together so it might
6 be crossing. You know, I want to make sure I understand what
7 you are asking.

8 Q. Sure. I want to make sure I understand what you say as
9 well.

10 So, if during an internal review, such as that
11 contemplated under Section 3 of AS 3 that we were just looking
12 at --

13 A. Yes.

14 Q. -- the review team realizes that there was work performed
15 but was not adequately documented so I will give you an
16 example.

17 A. Okay.

18 Q. If the engagement team orally confirms something but they
19 didn't write it down and during the internal review, which is
20 still within the documentation period the review team says did
21 you do this and they say, oh yeah, we did, we orally confirmed
22 it; and they say, well, you really should write that down; do
23 you consider that permissible under AS 3?

24 A. Okay. I understand now.

25 You can add documentation to a file that has clearly

J2E5mid4

Rodriguez - cross

1 evidenced the work was performed prior to the report release
2 date. So, sometimes it gets a little bit subjective because
3 you have to understand how are you comfortable the work was
4 indeed performed prior to that date. But, if there is other
5 persuasive evidence that exists that supports the work was done
6 in fact and you are documenting it, that's fine.

7 Q. And that would be permitted within the 45-day period?

8 A. Yes; as long as there is evidence of the work being
9 performed. Yes.

10 Q. And that would not be an additional procedure under
11 AU 3890, correct?

12 A. That is correct. In that instance, yes.

13 Q. Because AU 390 contemplates that audit procedures were not
14 actually performed, correct?

15 A. That's correct. Yes.

16 Q. So, under AU 390, if during an internal review you realize
17 that there was work that was not done, then you have to
18 document it in a particular way?

19 A. Right. Then you have to indicate it was an omitted
20 procedure. Correct.

21 Q. Okay. You can take that down. Thank you.

22 I would like to go through some of the meetings, the
23 monthly meetings between the PCAOB and KPMG. Are you aware
24 whether there were notes taken by someone attending the
25 meeting?

J2E5mid4

Rodriguez - cross

1 A. Yes.

2 Q. And are you aware whether those notes were written up into
3 some sort of summary memo?

4 A. The PCAOB did do that for our records, yes.

5 Q. And were those kept in the ordinary course of the PCAOB's
6 business?

7 A. Yes, they were.

8 Q. Did you review any of those meeting minutes in preparation
9 for your testimony?

10 A. Yes, I did.

11 Q. Do you know how the government obtained those meeting
12 minutes?

13 A. I don't think I do, no.

14 Q. Do you know whether they were in fact produced as a result
15 of a defense subpoena?

16 MS. MERMELSTEIN: Objection, your Honor.

17 THE COURT: Sustained.

18 BY MS. LESTER:

19 Q. But you reviewed some of these meeting minutes that we are
20 talking about in the course of your preparation, correct?

21 A. I did. Yes.

22 Q. Okay.

23 I would like to show you what's been marked for
24 identification as Government Exhibit 152 and I'm going to
25 renumber that as Defendant's Exhibit 264.

J2E5mid4

Rodriguez - cross

1 THE COURT: M-264?

2 MS. LESTER: Yes, sorry; M-264. Thank you, your
3 Honor.

4 BY MS. LESTER:

5 Q. If we could flip through a few of the pages? Now back to
6 the first page.

7 Do you recognize this document, Ms. Rodriguez?

8 A. This looks to be the minutes from one of the monthly
9 meetings.10 Q. And is the date of this particular meeting October 1st,
11 2014?

12 A. It does say that, yes.

13 Q. And do you see your name on the list of PCAOB attendees?

14 A. I do.

15 MS. LESTER: Your Honor, the government offers
16 Defendant's Exhibit M-264.

17 MS. MERMELSTEIN: Sorry. The government?

18 MS. LESTER: Did I say government?

19 MS. MERMELSTEIN: No objection, your Honor.

20 MS. LESTER: It was a government exhibit but now it is
21 a defendant's exhibit. Sorry, your Honor.

22 THE COURT: M-264 is received.

23 MS. LESTER: Thank you.

24 (Defendant's Exhibit M-264 received in evidence)

25 BY MS. LESTER:

J2E5mid4

Rodriguez - cross

1 Q. Ms. Rodriguez, you attended this meeting, as did Paul
2 Bijou, Steve Schindler, Bob Ross, Brian Sweet, Joe Haldeman,
3 and Amy Hunt from the PCAOB.

4 Do you see that?

5 A. I do see that.

6 Q. At that time Paul Bijou was the global leader for KPMG?

7 A. Yes, he was. Yes.

8 Q. And Steve Schindler, I believe you said, was the U.S. team
9 leader?

10 A. Yes, he was.

11 Q. And you served under them, correct?

12 A. Yes, I did.

13 Q. And from the firm personnel, that refers to KPMG attendees,
14 correct?

15 A. Yes, it does.

16 Q. And do you see Mr. Middendorf's name there?

17 A. Yes, I do.

18 Q. And at this time Jim Liddy would have been the vice chair
19 of audit, correct?

20 A. Yes.

21 Q. Let's look at page 3 towards the bottom two thirds of the
22 page starting with the paragraph that starts: *The four*
23 *programs*, the fourth bullet point.

24 Is this an example of KPMG -- first of all, do you
25 know who GH is, based on the description at the front of the

J2E5mid4

Rodriguez - cross

1 page? Or maybe you know off the top of your head. If not, we
2 can go back to the first page.

3 A. I think it is George Hermann, I think.

4 Q. Yes.

5 And George Hermann is a KPMG employee?

6 A. He was, yes.

7 Q. Do you know what his title was?

8 A. I think, if I am remembering correctly, it was chief
9 auditor. I could be wrong, but I think that's what it was.

10 Q. And he is describing four programs that KPMG had worked on
11 and is presenting those findings. Is this typical of the type
12 of information that KPMG would present at these monthly
13 meetings?

14 A. Yes, it was.

15 Q. And, if we can scroll down a bit, KPMG is talking about the
16 investment of time and resources in these programs including
17 that 30 partners and senior managers took part for six to eight
18 weeks.

19 Do you see that?

20 A. Yes.

21 Q. Can we go, please, to page 10?

22 Do you know who PB is?

23 A. I believe that's Paul Bijou.

24 Q. Do you recall earlier we were discussing the PCAOB's
25 official position that they don't give comments based solely on

J2E5mid4

Rodriguez - cross

1 a documentation issue in relation to the audit committee
2 guidance that we looked at?

3 A. Uh-huh.

4 Q. Now, at the top of the page, could you read, just to
5 yourself, what Mr. Bijou says there and then I'm going to ask
6 you some questions.

7 (pause)

8 So the second sentence Mr. Bijou says: We generally
9 don't write comment forms due to a lack of documentation unless
10 it is egregious.

11 And that echoes what we looked at in the audit
12 committee guidance, correct?

13 A. Yes.

14 Q. That is, the PCAOB is focused on the work, not so much on
15 the documentation?

16 A. We are focused on the work that's performed and the
17 documentation is part of that but it's not the only thing and
18 there could be other persuasive evidence that supports work was
19 done, yes.

20 Q. Okay. We can take that down. Thank you.

21 I would like to show you another example of the
22 meeting minutes, if we could look at what's been marked for
23 identification as Government Exhibit 157, which I will renumber
24 as Defendant's Exhibit M-266.

25 Does this appear to be another summary of the monthly

J2E5mid4

Rodriguez - cross

1 meeting, this one taking place on May 27th, 2015?

2 A. Yes, it is.

3 Q. And, do you see your name on the list of PCAOB attendees?

4 A. Yes, I do.

5 MS. LESTER: Your Honor, the defense offers
6 Defendant's Exhibit M-266.

7 MS. MERMELSTEIN: No objection.

8 THE COURT: M-266 is received.

9 (Defendant's Exhibit M-266 received in evidence)

10 BY MS. LESTER:

11 Q. If we can look at the agenda there at the top of that page
12 it says, no. 1, current inspections, no. 2, please provide an
13 update regarding the implementation of the following actions:
14 Flowcharting and accelerating audit execution initiative.

15 Accelerating audit execution, do you have an
16 understanding of what that program was at KPMG?

17 A. Yes, I do.

18 Q. Was it a program that KPMG implemented to encourage audit
19 teams to conduct their work not only at the very end of the
20 year but to try to space it out more throughout the year so
21 there wasn't as much of a crunch at year-end?

22 A. Yes.

23 Q. And so, the point of that initiative was to try to improve
24 overall audit quality by not doing everything in a rush at the
25 year's end, correct?

J2E5mid4

Rodriguez - cross

1 A. That's correct.

2 Q. And then, no. 3 is: Please provide an update on root cause
3 analysis for the following: Professional skepticism and
4 supervision and review.

5 And this root cause analysis is what we were
6 discussing a moment ago, this is trying to get to the bottom of
7 particular audit quality issues, right?

8 A. That's correct. Yes.

9 Q. So, examining through the work of the audit teams what is
10 at the root of the problem, correct?

11 A. That's correct.

12 Q. And, again, this was another initiative that KPMG was
13 undertaking to improve their audit quality, right?

14 A. Correct.

15 Q. And they were reporting on it to the PCAOB?

16 A. Yes, they were.

17 Q. Could we look at page 9?

18 So, this is part of the discussion about the root
19 cause analysis and in the middle Jim Liddy, who is the vice
20 chair of audit for KPMG is saying please look at them if you
21 have a chance. They've just been going through a bunch of
22 slides.

23 So, he appears to be asking the PCAOB to take a look
24 at the slides that they've just presented on, correct?

25 If you want to look at the whole page we can zoom back

J2E5mid4

Rodriguez - cross

1 out.

2 A. Okay. I can read it, let me read it for a second.

3 Q. Okay.

4 (pause)

5 A. Okay.

6 Q. And, do you see where Mr. Liddy is saying we would
7 appreciate any feedback you might have?

8 A. Yes, I do.

9 Q. So, he appears to be asking the PCAOB if it has feedback on
10 the reactions to KPMG's presentation on their root cause work,
11 correct?12 A. From what I am reading it appears to be asking us for
13 feedback on their KVNs unless from -- from what I am reading on
14 this page.

15 Q. We could look at the prior page if we could, Ms. O'Connor?

16 Oh, this is accelerating audit exclusion -- I
17 apologize -- so it is item 2B, accelerating audit exclusion.
18 They have a handout and then they're asking for feedback.19 A. Uh-huh. Yes, it appears that they're asking for feedback
20 on the KVNs, the information they gave us.21 Q. If we could look now at page 16 and 17, if it is possible?
22 I don't know if it is possible to do a dual screen or if we can
23 flip between them. Maybe not? Okay, so now we have both
24 pages.

25 Directing your attention to the bottom part of page 16

J2E5mid4

Rodriguez - cross

1 starting with, When talking about the mindset...

2 A. Okay.

3 Q. If we can go back for a second to make sure I know who is
4 talking? I think it is Steve Georgian. Yes.

5 So, Steve Georgian is talking in the middle of the
6 page and he continues after he does the numbered points he
7 says: *When talking about the mindset and client relations, I*
8 *mentioned that clients are not always understanding or*
9 *appreciating current regulatory requirements. We think that a*
10 *portfolio review is part of what fits into there.*

11 Do you have an understanding of the tensions that
12 might arise between an audit firm and its clients over the
13 impact of certain regulatory requirements with respect to
14 audits in particular?

15 A. In a broad sense, yes. Yeah.

16 Q. And, do you understand from your conversations, with KPMG
17 or other audit firms, that sometimes their clients, that is the
18 actual businesses, express frustration with the impact of the
19 audit firms?

20 MS. MERMELSTEIN: Objection to relevance, your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: I have heard the firms say that, yes.

23 BY MS. LESTER:

24 Q. You have heard firms say that?

25 A. I have heard KPMG say that.

J2E5mid4

Rodriguez - cross

1 Q. Can we go to the next page, page 17?

2 And, Jim Liddy, about a quarter of the way down the
3 page, he says: *We have actively been exiting client*
4 *relationships. We have also had instances where we had honest*
5 *conversations with our clients about the level of effort and*
6 *the cost of that and asked for fee increases. We can walk you*
7 *through specific examples.*

8 And then he says: *I worry about teams getting bit by*
9 *clients that do not appreciate the value of what we are doing*
10 *and why we are doing it.*

11 Do you see that?

12 MS. MERMELSTEIN: Sorry. Objection, your Honor. May
13 we approach?

14 THE COURT: Yes.

15 (Continued next page)

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J2E5mid4

Rodriguez - cross

1 (At side bar)

2 MS. MERMELSTEIN: I don't see the relevance of it at
3 all, of information that KPMG clients were pushing back on the
4 fact that sort of the regulator was requiring certain audit
5 procedures. And, I think there is a real 403 problem here
6 because the implication is the PCAOB's requirements were
7 unreasonable, were unfair, or were negatively affecting KPMG
8 and its ability to affect clients and I think that kind of,
9 kind of nullification, blaming of the victim is a real 403
10 problem, and it has no relevance to the issues at trial and so
11 we couldn't be going into complaints whether or not the PCAOB
12 sort of work was actually sort of helpful or necessary. It
13 existed and that's the point. Sort of people's personal views
14 about whether or not it imposed too many burdens is irrelevant.

15 THE COURT: What is the relevance?

16 MS. LESTER: Your Honor, first of all, this document
17 is in evidence already and I am simply reading from it. I am
18 not arguing, but it is relevant. This case is all about
19 Mr. Middendorf's intent and these statements, this view that
20 KPMG held that it was a business decision that they were
21 representing, that they had certain clients who faced
22 additional hurdles that were in some cases beyond those
23 client's capacities and that they were struggling to meet the
24 PCAOB requirements is directly relevant to his intent in this
25 case.

J2E5mid4

Rodriguez - cross

1 THE COURT: I mean, I am concerned about waste of
2 time. I am concerned about time. It is in evidence, so.

3 MS. MERMELSTEIN: It is, your Honor, but to be clear,
4 the document is a business record and the fact that these
5 meetings took place and there are other portions of what
6 they're talking about, efforts to improve audit quality I think
7 that are fair game, doesn't render everything in it an
8 appropriate area for questioning and argument just because the
9 document has come in as admissible.

10 MS. LESTER: I am not going to belabor it, your Honor,
11 but I think leaving it where it is with this particular point,
12 I have a few more questions specific to KPMG's client base,
13 that is, that they represented a larger number of financial
14 institutions than the other Big Four and that that has a direct
15 impact on the significance of the ALLL assessment which is
16 related to those clients. Other firms didn't have as much of
17 an issue because they didn't have as many of those clients.

18 That's the overall relevance.

19 THE COURT: I think there is some reliance. I will
20 allow you to go a little bit more with it.

21 MS. LESTER: Okay.

J2E5mid4

Rodriguez - cross

1 (In open court)

2 BY MS. LESTER:

3 Q. So, I believe we were in the middle of page 17 of
4 Defendant's Exhibit M-266. Do you recall discussions where
5 KPMG told the PCAOB that it was evaluating its client
6 relationships because of the regulatory burdens imposed on
7 those clients?8 A. I remember discussions about them evaluating client
9 relationships. I do not remember the reason why.

10 Q. Okay. Thank you. You can take that down.

11 Let's move on to what's been marked for identification
12 as Government Exhibit 160, which I will renumber as Defendant's
13 Exhibit M-267. Do you recognize this document or do you
14 recognize it to be another of the monthly meeting minute notes,
15 this one dated June 24th, 2015?

16 A. I do.

17 Q. And, do you see your name on the list of PCAOB personnel
18 attending?

19 A. Yes, I do.

20 MS. LESTER: Your Honor, the defense offers
21 Defendant's Exhibit M-267.22 MS. MERMELSTEIN: No objection to the admission
23 generally, your Honor.

24 THE COURT: M-267 is received.

25 (Defendant's Exhibit M-267 received in evidence)

J2E5mid4

Rodriguez - cross

1 BY MS. LESTER:

2 Q. Let's look at the bottom of page 1. You are actually
3 speaking, you are giving an update on the status of current
4 inspections and emerging themes and you are saying that the
5 PCAOB has completed 24 inspections with 32 comments forms and
6 have issued 27.

7 What is the difference there between the 32 comment
8 forms versus, what does it mean to issue 27?

9 A. I believe in this instance that would mean five were in
10 process of being written.

11 Q. Okay, because then it says five comments are in process.
12 Okay.

13 Let's go to the top of the next page. So, this is
14 still you speaking and you are mentioning that the firm
15 recently disagreed with a comment.

16 Do you see that?

17 A. Yes, I do.

18 Q. And if you could -- I'm sorry, expand the screen a little
19 bit so we can see a little more?

20 Do you have any specific recollection of this
21 incident?

22 A. No, I don't.

23 Q. Okay. So, let's Ms. O'Connor, can we zoom out and let her
24 read the entire page?

25 A. Thank you.

J2E5mid4

Rodriguez - cross

1 Q. Yes. And if you could scroll down a bit more, please?

2 Thank you. I think that's good. And if you can tell me when
3 you are ready?

4 A. Okay. (pause) Okay, I have read the page.

5 Q. So, is it fair to say that this discussion here is about a
6 situation in which the firm that is KPMG relied on information
7 directly from the company or from an affiliate firm, I guess,
8 and did not document it?

9 Is that correct?

10 A. So, in this instance what it appears to be is that the firm
11 used the work, the U.S. firm used the work from a foreign
12 affiliate and did not, there was no evidence of the file of
13 their evaluation of the knowledge, skill, and ability of the
14 affiliate firm team members.

15 Q. So, in other words, they relied on it without verifying
16 sufficiently its accuracy or reliability?

17 A. Of the people actually performing the work, yes.

18 Q. Okay. If we can go to the next page, page 3?

19 Do you see at the top Tom Whittle, do you know what
20 his role was at KPMG at this time?

21 A. Yes. He was the head of inspections.

22 Q. And he is explaining that, in the firm's view, the reason
23 that they disagreed was that this was an exception because the
24 engagement team was, in his words, joined at the hip with the
25 foreign affiliate team and understood what they had performed,

J2E5mid4

Rodriguez - cross

1 correct?

2 A. That is what this says, yes.

3 Q. So he is explaining the reason for the disagreement with
4 the proposed comment, correct?

5 A. Correct.

6 Q. So, is this an example of what we were talking more about
7 in the abstract, this process where the PCAOB informs the firm
8 of potential areas of comment or its intention to issue a
9 comment and then the firm provides context or explains why they
10 don't think a comment is warranted?

11 A. Yes. So, in our comment forms there is an opportunity for
12 the firms to say whether they agree or disagree and provide
13 additional information in the event that they disagree, and
14 then in those instances we may attempt to have further
15 discussions; so, yes. That appears to be what this is.

16 Q. So, in other words, it appears from the prior page that we
17 looked at that the firm actually did that, that they, in
18 writing, disagreed, and then there is further discussion at
19 this monthly meeting about the reason for the disagreement,
20 correct?

21 A. Yes. That appears to be what this is.

22 Q. We can take that down. Thank you.

23 I don't have too many more of these but let's look at
24 what's been marked for identification as Government Exhibit
25 165, which I will renumber as Defendant's Exhibit M-268. This

J2E5mid4

Rodriguez - cross

1 is another monthly meeting notes, this one is dated October
2 19th, 2015, and do you see yourself as one of the people
3 attending this meeting?

4 A. I do.

5 MS. LESTER: Your Honor, defense offers Exhibit M-268.

6 MS. MERMELSTEIN: No objection.

7 THE COURT: M-268 is received.

8 (Defendant's Exhibit M-268 received in evidence)

9 BY MS. LESTER:

10 Q. If we can look down at the bottom of this first page? If
11 we could zoom in a bit on the first and carry over page?

12 Is "SS" Steve Schindler?

13 A. Yes, it is.

14 Q. What was his role again at this time?

15 A. At this point he would have been the U.S. team lead.

16 Q. So, I believe "SR" is you and you are providing a recap of
17 the inspection status, and then Steve Schindler is indicating
18 that the disagree rate, KPMG's disagree rate was 9 out of 46 or
19 20 percent.

20 What does that refer to, "disagree rate?"

21 A. Disagreement rate, in general, is when the firm disagrees
22 with a piece of the comment form or the comment form as a
23 whole. So, I'm not sure if these are pieces or wholes, but it
24 is some combination thereof.

25 Q. Would 9 out of 46 indicate to you that out of 46 comments

J2E5mid4

Rodriguez - cross

1 KPMG is disagreeing with 9 of them?

2 A. Or disagreeing at least with a piece of 9 nine of them.

3 Q. Underneath that it says: Still sizeable number compared to
4 peer firms.

5 Correct?

6 A. It says that, yes.

7 Q. And it says: Last year the disagree rate was 39 percent?

8 A. That's correct.

9 Q. Isn't it the fact that a consistent criticism of KPMG
10 during this time period was the fact that it disagreed with too
11 many comments?

12 A. I'm trying to remember the actual nature of it.

13 Disagreeing happens and that's okay, but the differences is are
14 you disagreeing to disagree because there is actually an issue
15 here, or disagreeing just to disagree. So, I have to go back
16 and look at that, but there was an issue with disagreement at
17 that time.

18 Q. And the PCAOB, fair to say, felt that KPMG disagreed too
19 much?

20 A. That is what this says, yes.

21 Q. And not just that's what this says but do you recall that
22 being a topic of discussion at these monthly meetings?

23 A. I don't know if we said too much as much as there was
24 discussion around it being high and wanting to understand what
25 the nature of the issue was behind that.

J2E5mid4

Rodriguez - cross

1 Q. And when you say high, that would be in comparison to the
2 other Big Four firms, correct?

3 A. That is what it says here, yes.

4 Q. Would it be the other GNF firms when they're using the term
5 "peer firms" or would it just be the Big Four?

6 A. I don't remember that.

7 Q. But at the very least it would be amongst the Big Four,
8 correct?

9 A. That seems reasonable. I would think so.

10 Q. Okay, we can take that down. Thank you.

11 I would like to show you what's been marked for
12 identification as Government Exhibit 169, which I will renumber
13 as Defendant's Exhibit M-269. Does this appear to be the
14 monthly meeting minutes for March 26, 2016, and do you see
15 yourself as one of the attendees from the PCAOB?

16 A. Yes, I do.

17 MS. LESTER: Your Honor, defense offers Defendant's
18 Exhibit M-269.

19 MS. MERMELSTEIN: No objection.

20 THE COURT: M-269 received in evidence)

21 (Defendant's Exhibit M-269 received in evidence)

22 BY MS. LESTER:

23 Q. If we can go to page 3? At the bottom half of that page,
24 do you see the words "audit quality bonus?"

25 A. Yes, I do.

J2E5mid4

Rodriguez - cross

1 Q. Did you have an understanding that at some point KPMG
2 instituted an audit quality bonus?

3 A. Yes, I did.

4 Q. And that would be given to members of an engagement team
5 who achieved no comments on an inspection. Was that your
6 understanding?

7 A. Yes. An external inspection, yes.

8 Q. Did you have an understanding of the amount of the bonuses?

9 A. Not that I -- I may have at the time. I don't remember.

10 Q. Were you aware, from your own work on KPMG inspections,
11 whether there were also members of the national office who
12 participated as part, to liaise with the engagement teams
13 during the field work?

14 A. On PCAOB inspections?

15 Q. Yes.

16 A. Yes, there were national office members there; yes.

17 Q. So there was the engagement team who was the normal audit
18 team who had worked with that business?

19 A. Yes.

20 Q. And then, in addition to that, there were at least one
21 other person who came from the national office to sort of
22 assist with the inspection. Is that fair to say?

23 A. Yes, that is. Yes.

24 Q. And sometimes that person was a former PCAOB employee?

25 A. It very well might have been, yes.

J2E5mid4

Rodriguez - cross

1 Q. Did you ever have that situation on one of your inspections
2 where it was a former PCAOB employee?

3 A. I don't remember. Could have. I don't have any memory of
4 it.

5 Q. Are you aware whether Brian Sweet, for example, served in
6 that role as a liaison on some of the KPMG inspections?

7 A. I think he did, yes.

8 Q. And, as we already discussed, he was a former PCAOB
9 employee who then joined KPMG and he had a speciality in
10 banking, correct?

11 A. That's correct.

12 Q. And so, did you have an understanding about whether this
13 audit quality bonus applied to the engagement teams or to the
14 liaisons, or to both?

15 A. I don't remember if it was beyond the engagement team. I
16 don't. I don't know that I know that.

17 Q. So, you understood it at least to apply to the engagement
18 team members?

19 A. Yes.

20 Q. Okay, you can take that down. Thank you.

21 Last one, I think. Let's look at what's been marked
22 for identification as Government Exhibit 173, which I will
23 renumber as Defendant's Exhibit M-270. Does this appear to be
24 meeting notes for a meeting that happened on May 24th, 2016,
25 which you attended, at least telephonically it indicates?

J2E5mid4

Rodriguez - cross

1 A. It appears I was telephonic, yes.

2 MS. LESTER: Your Honor, the defense offers
3 Defendant's Exhibit M-270.

4 MS. MERMELSTEIN: No objection.

5 THE COURT: M-270 is received.

6 (Defendant's Exhibit M-270 received in evidence)

7 BY MS. LESTER:

8 Q. If we can go to page 5, do you see that no. 4, Lost Issuer
9 Bank List?

10 A. Yes.

11 Q. Do you have an understanding of what that refers to?

12 A. I vaguely remember this, yes.

13 Q. Do you want to read the page to see if you remember more?

14 A. That would be helpful. Yes, thank you.

15 MS. MERMELSTEIN: Your Honor, this is the same
16 objection at side bar. I think there has been enough leeway
17 already.

18 THE COURT: I will allow you to go with this document.

19 MS. LESTER: Thank you, your Honor.

20 (pause)

21 THE WITNESS: Okay.

22 BY MS. LESTER:

23 Q. Do you remember on your direct examination when you looked
24 at Government Exhibit 102, that very large planning
25 spreadsheet?

J2E5mid4

Rodriguez - cross

1 A. Yes, I do.

2 Q. And one of the columns, I believe, that Ms. Mermelstein
3 directed you to, was a column about whether the, it was the
4 last year that that audit client had been at KPMG?

5 A. Yes.

6 Q. In other words, had switched audit firms?

7 A. Yes.

8 Q. And that was something that the PCAOB looked at and
9 evaluated in terms of its risk analysis, correct?

10 A. I believe it was one of the items, yes.

11 Q. Why is that something that the PCAOB cared about?

12 A. I would have to look at that profile but I think it had a
13 lower weight of the items. If I am remembering correctly, a
14 lot of them we wanted to understand the reason for the switch.
15 It is not just that it switched, it is why did it switch.

16 That is what we were looking at.

17 Q. And, is it fair to say there might be a number of different
18 reasons why a firm that is a business chooses to switch its
19 audit firms?

20 A. Yes.

21 Q. And so that's one reason why you wanted to know more than
22 the fact of the switch, you wanted to know the reason behind
23 it?

24 A. Yes.

25 Q. And one reason might be the cost?

J2E5mid4

Rodriguez - cross

1 A. It could be.

2 Q. And one reason might be convenience, perhaps, or a
3 relationship with another audit firm?

4 A. There is a ton of reasons why.

5 Q. There are many reasons?

6 A. Yes. Yes.

7 Q. Isn't it the fact that PCAOB asked KPMG to give it a list
8 of clients who had left the firm?

9 A. It appears to be in the minutes to say that. I don't
10 completely remember that whole issue, but from the minutes it
11 appears that that did happen.

12 Q. And so, KPMG is saying that they did that, they put
13 together a three-year history of their bank clients and they're
14 reporting this to the PCAOB, correct?

15 A. Yes. It appears to.

16 Q. And, in the middle of the paragraph, Mr. Canfarotta is
17 talking. And who is Mr. Canfarotta at this time? What is his
18 title?

19 A. I know he was one of the leaders in the financial services
20 banking practice.

21 (Continued on next page)

22

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J2edmid5

Rodriguez - cross

1 Q. And so in the beginning -- I'm sorry, in about the center,
2 there is a sentence, "A total of 9 have been lost due to
3 acquisitions and 17 situations where engagements were
4 terminated due to auditor changes."

5 A. Yes.

6 Q. And so those are some of the reasons, right, where if a
7 bank gets acquired by another entity, that other entity might
8 already have a different auditor and they might not continue
9 with KPMG, correct?

10 A. Yes. It says that the relationship was terminated due to a
11 change in auditor, yes.

12 Q. And the next sentence, "Thinking about the 17, virtually
13 all of them, with the exception of HSBC came about after one or
14 more audit years where there were considerable changes in
15 completing the ALL areas."

16 Do you see that?

17 A. I do.

18 Q. And that next sentence, "These dealt with changing
19 methodology requiring enhanced documentation, testing controls,
20 etc., especially in the 2014 to 2015 audits."

21 A. Yes.

22 Q. You said that banking is not your area, but do you have any
23 understanding of what that means, "the changing methodology
24 requiring enhanced documentation testing controls, etc."?

25 A. I don't have any -- I don't really remember a lot of this

J2edmid5

Rodriguez - cross

1 to speak to the specifics of that, no.

2 Q. Is it fair to say that the ALL is a challenging area in
3 terms of degree of difficulty?

4 A. It's a subjective challenging area, yes.

5 Q. And it involves a fair amount of judgment on the part of
6 the auditor in terms of estimating the appropriate level of
7 reserve, correct?

8 A. So the issuer -- the issuer will determine the reserve --
9 the company would determine the reserve and the auditor, right,
10 is looking at the reasonableness and that number, so there is a
11 lot of judgment involved in that. There is a lot of judgment
12 involved on the part of the issuer, so the auditor has to
13 assess the reasonableness of that judgment, yes.

14 MS. LESTER: We can take that down, thank you.

15 Q. Were you aware -- strike that.

16 Is it the fact that several of the Big Four firms have
17 particular businesses -- types of businesses that they
18 specialize in? In other words, their client base might be made
19 up in large part of a particular type of business?

20 A. I don't know that any type of specialization that would be
21 happening at the other firms.

22 Q. Do you know whether KPMG had a lot of banking and financial
23 institution clients?

24 A. It was a focus area of theirs, yes, or is a focus area,
25 yes.

J2edmid5

Rodriguez - cross

1 Q. Did you know how that compared to the other Big Four firms?

2 A. In broad strokes, it is a large practice but not how it
3 compared.

4 Q. So you knew it was a large practice at KPMG, though?

5 A. Yes.

6 Q. And the ALLL is a particular auditing procedure that
7 applies in the case of financial institutions, correct?

8 A. That is a focus area that you typically would see, yes.

9 Q. Did you also have any understanding of the types of
10 financial institutions that KPMG represented in terms of audit
11 clients; that is, from your work on the inspection team, did
12 you have a sense of the size of the banks, for example?

13 A. I know they audit some very large banks down to smaller
14 banks, like the scope of the banks but not with any specifics,
15 or I couldn't do that off memory now, no.

16 Q. Did you have any sense of whether they audited a number of
17 smaller banks, community banks?

18 A. They do have a community banking practice, yes.

19 Q. And fair to say that many of those banks are located in
20 different places around the country, not necessarily in the
21 financial centers like New York or Los Angeles, they could be
22 in smaller communities?

23 A. They are all over the country, yes.

24 Q. And when you were talking about -- I believe you were
25 talking about the internal controls over financial reporting,

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Rodriguez - cross

1 that that is one aspect of what an auditor needs to look at,
2 that is not just the financial statements themselves but
3 evaluating the controls that the business has in place,
4 correct?

5 A. Correct, yes.

6 Q. And so is it fair to say that a smaller institution might
7 not have as robust controls as a larger institution?

8 A. That's possible.

9 Q. And, in fact, a larger institution has more staff, for
10 example?

11 A. That's not an unreasonable assumption. That's possible,
12 yeah.

13 Q. And, therefore, it might be able to implement more robust
14 internal controls over their financial reporting as well?

15 A. It's possible. It's hard to say, every issuer is so
16 different. You could have a very small bank that has, you
17 know, great staffing but controls. It's hard to make those
18 generalizations because it can be different. These are not
19 unreasonable statements. I don't know with any specificity
20 around those size of issuers and how they are going to work.

21 Q. Do you have any personal knowledge of whether, for example,
22 for KPMG the issuers who received comments were more likely to
23 be smaller sized banks versus larger financial institutions?

24 A. We've had those. They have been in small and they have
25 been in large.

J2edmid5

Rodriguez - cross

1 Q. So you can't say based on your own personal knowledge
2 whether smaller institutions were more likely to receive
3 comments?

4 A. No, because I've seen it in both instances so I couldn't
5 say with any certainty which had more.

6 Q. I want to turn now to the 2016 replacement inspection, and
7 when I say that, I'm referring to the ten additional
8 inspections that were undertaken by the PCAOB, and I believe
9 the work was actually performed in 2017?

10 A. That's correct, yes.

11 Q. And that was after the PCAOB was notified that there had
12 been a leak of confidential information, correct?

13 A. We performed those inspections after, yes.

14 Q. And the PCAOB was informed in about April of 2017?

15 A. I don't know exactly -- I received it later. It came to me
16 and I was not the original person who received it. I don't
17 know exactly when that notification came in because I wasn't
18 the initial point of contact on that, but I think it was around
19 that time, yes.

20 MS. LESTER: Could we just show the witness what's in
21 evidence as Government Exhibit 6. Sorry. Government Exhibit I
22 think it is 5. And could we go to page 9?

23 I'm sorry, I went too far. 8. It should be the prior
24 page. I'm sorry, Ms. O'Connor. I don't have it in front of
25 me. Could we go to page 7. OK.

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Rodriguez - cross

1 Q. Can you read the top paragraph there to yourself?

2 A. Yes.

3 (Pause)

4 OK.

5 Q. This is the report of the 2016 inspection of KPMG, correct?

6 A. Yes.

7 Q. And this is a public document?

8 A. Yes, it is.

9 Q. Now?

10 A. Yes.

11 Q. And it says that the firm publicly announced in April of
12 2017 that the leak had occurred, correct?

13 A. And that is when they publicly announced it.

14 Q. And the "firm" there means KPMG, right?

15 A. Yes.

16 Q. OK. So in April of 2016, KPMG had publicly announced that
17 this leak of information had occurred?

18 A. April 2017, yes.

19 Q. And then later that year is when the PCAOB conducted these
20 replacement inspections, correct?

21 A. That is correct, yes.

22 Q. And that was done through field work, correct? It wasn't
23 done simply through -- it wasn't done remotely; it was still
24 done on site?

25 A. It could have been a combination, but the majority would

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Rodriguez - cross

1 have been on site, yes.

2 Q. Do you know, actually?

3 A. I actually don't know. I have to look. I know we do PCAOB
4 inspections, that's possible. I don't know with specifics to
5 these.

6 Q. OK. But typically the way PCAOB inspections are conducted
7 is on site?

8 A. Yes.

9 Q. You just don't know in this instance whether that was the
10 case?

11 A. I just don't remember. I would have to have a look.

12 MS. LESTER: You can take that down. Thank you,
13 Ms. O'Connor.

14 Q. And those reinspections, the replacement inspections,
15 occurred between approximately May and October of 2017. Does
16 that sound right to you?

17 A. That sounds right.

18 Q. That's when the work was actually done?

19 A. Yes.

20 Q. And that was only for ten issuers, right?

21 A. Those additional inspections, those ten additional occurred
22 in that time period. There was other work occurring in that
23 time period, but I believe those are the dates for the ten.

24 Q. Right. My question was for the ten additional inspections,
25 the field work, or the inspection work was going under in that

J2edmid5

Rodriguez - cross

1 time period?

2 A. Yes.

3 Q. And the PCAOB had already conducted its inspections of the
4 other issuers, the 41 or so that were included in the report,
5 correct?

6 A. Correct.

7 Q. That had already been completed in the normal course of the
8 prior year?

9 A. That's correct.

10 Q. So the only additional work that was going on in terms of
11 this particular year's inspection were the replacement
12 inspections?

13 A. From an issuer's perspective. There was other PCAOB work
14 going on at that time, but these issuers -- 2016 issue
15 inspections were occurring at that time also.

16 Q. And if you need the report itself to come up again but
17 maybe you recall this off the top of your head. The report
18 itself was not actually issued until January 2019, correct?

19 A. Correct.

20 Q. About a month ago?

21 A. That is correct.

22 Q. Yes. A little bit the less than a month ago?

23 A. Mm-hmm.

24 Q. Did you have any role in determining the timing of when
25 that report would be issued?

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Rodriguez - cross

1 A. I did not.

2 Q. Did you discuss with the government in your preparation for
3 your testimony today the timing of the report?

4 A. Yes, I did.

5 Q. What did you discuss?

6 A. Whether that was unusual or not.

7 Q. Did you meet with the government before the report was
8 issued?

9 A. I think I might -- I think I did, yes. I think that one of
10 our meetings was.

11 Q. Did you discuss with them when the report would be made
12 public?

13 A. I did not, no.

14 Q. You didn't know?

15 A. I did not, no. I did not have that discussion.

16 Q. Did you know when the report would be made public?

17 A. I don't know that I knew that at the time, no, because some
18 of those discussions were at the board level so I wouldn't have
19 been involved in that, no.

20 Q. I was just going to ask, who decides ultimately when to
21 release the report?

22 A. The board.

23 Q. And is there any particular magic to the timing? You
24 looked at that chart earlier and the release dates were
25 variable.

J2edmid5

Rodriguez - cross

1 A. No, there is not a set rule or rules. It's really when you
2 can get through the work and all issues can be resolved and
3 there is -- any types of discussions are going on are settled,
4 so there is not like a magic formula or anything like that for
5 the date.

6 Q. So there is no set time or a certain number of days after
7 the work is completed that the report has to be issued?

8 A. That is correct, no.

9 Q. So it's up to the PCAOB in their discretion and depending
10 on how their timing is in terms of the work to decide when to
11 release the report?

12 A. I believe so.

13 Q. And in this case, the PCAOB decided to publicly release
14 that report on January 15, 2019, correct?

15 A. I don't know -- I don't know if that is the date that it
16 was published --

17 Q. We could show you -- why don't we put that up.

18 MS. LESTER: Ms. O'Connor, could you put up the first
19 page of Government Exhibit 5, please.

20 (Pause)

21 Q. So the date is January 15, 2019.

22 A. Yes, that is the date of the report. I don't know if that
23 is the date that it actually was put on the website. Sometimes
24 those are different days depending on posting or what have you.

25 Q. Sure. Fair enough. But this is the date that appears on

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Rodriguez - cross

1 the front of the report?

2 A. Yes, it is.

3 Q. Could we just look at the front of Government Exhibit 6.

4 This is the 2017 inspection report, correct?

5 A. Yes.

6 Q. And this was issued on January 24, 2019?

7 A. Yes.

8 Q. So almost ten days -- a little bit less than ten days
9 later?

10 A. Yes, that's correct.

11 Q. And did you have any role in the timing of the release of
12 this report?

13 A. No, I did not.

14 Q. Do you know why these reports were issued less than ten
15 days apart?

16 A. I don't know if they were issued less than ten days -- I
17 don't know that they were issued at the same time. I think
18 there was a difference in completing them because of edits and
19 dealing with, you know, questions and what have you in the
20 report in the normal course. I don't know if they were
21 released separately. I don't know that.

22 Q. Do you think they might have actually been completed at the
23 same time --

24 A. No, I don't know when they are posted to the website. I
25 don't know when that actually happens.

J2edmid5

Rodriguez - cross

1 Q. You agree that they are dated --

2 A. Yes.

3 Q. -- a little less than ten days apart?

4 A. Yes, that is true.

5 Q. And in the normal course, what is your understanding of how
6 quickly the reports are posted to the website?

7 A. I don't know that I know that because I'm not involved in
8 that part of it.

9 Q. OK. So you -- when you're saying it could have been a
10 different date, you don't actually know whether they post --
11 they could post it the same day?

12 A. That's what I am saying. I don't know the date that it
13 actually posts.

14 Q. OK. But this is the date that it's issued in the sense
15 that this is the date that it's sent to the firm itself,
16 correct?

17 A. I believe so.

18 Q. It's unusual to have two years' reports issued one right
19 after the other like this, correct?

20 A. I'm not aware of other instances, so I don't know that this
21 happened before.

22 Q. You've never heard of it happening before?

23 A. No.

24 Q. When were you first notified by the government that you
25 were expected to be a witness in this case?

J2edmid5

Rodriguez - cross

1 MS. MERMELSTEIN: Objection to relevance, your Honor.

2 THE COURT: I will allow it.

3 Go ahead.

4 A. I don't remember when I was told that they might want to
5 speak with me. I don't remember that day.

6 Q. Do you remember approximately when it was?

7 (Pause)

8 Was it this year, in this calendar year, or the prior
9 year?

10 A. No, I think it was in the prior year. I just don't
11 remember when it was.

12 Q. Was it prior to Christmas? Was it towards the end of the
13 year?

14 A. It was prior to Christmas. I think it was in the latter
15 four months of the year or so, the latter three months. I
16 don't remember.

17 Q. And during that time, were you in communication with the
18 government about the timing of either the 2016 or the 2017
19 inspection report?

20 MS. MERMELSTEIN: Objection to asked and answered and
21 the good faith basis for the question.

22 THE COURT: Sustained.

23 MS. LESTER: You can take that down. Thanks,
24 Ms. O'Connor.

25 BY MS. LESTER:

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Rodriguez - cross

1 Q. You testified about the need to come up with the
2 additional -- both the additional replacement inspections and
3 the 2017 list. You said that the 2017 list had to be redone,
4 correct?

5 A. Yes, that's correct.

6 Q. And, Ms. Mermelstein asked you to estimate the number of
7 staff hours that it took to do that, correct?

8 A. Correct.

9 Q. What was that based on?

10 A. Where the number comes from are -- we schedule ourselves
11 out based on the actual project we are working on. So I am
12 involved with the team and the scheduling, and I know what
13 they're working on at any given time. So, it is based on those
14 records.

15 Q. In the normal course, PCAOB employees do not keep track of
16 their time, do they?

17 A. We schedule according to time, yes, that we schedule --
18 we've always scheduled according to project. In that time
19 period, I don't know if time was recorded by activity, I don't
20 know when that started, but we've always scheduled by project,
21 yes.

22 Q. What do you mean by "scheduled by project"?

23 A. We have a scheduling system that lets you know what you're
24 going to be working on, and it maintains that information
25 historically, what you were scheduled on or working on in a

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Rodriguez - cross

1 given period of time, and that's scheduled by activity within
2 the firm. That has always occurred.

3 There is time reporting so you then record the time
4 and the project you worked on. I think it did record that, but
5 I don't remember because we're on a new time reporting system
6 so I don't know what the old system captured

7 Q. Do you remember when that new system was put in place?

8 A. Sometime this year.

9 Q. Sometime this year?

10 A. In '18. I apologize. Not in 2019.

11 Q. And prior to that, if you were working on something on a
12 particular day, you didn't keep a time record of how many hours
13 you spent on which task, did you?

14 A. We reported time. I just don't -- the increments I think
15 might have changed since some of the data we gathered changed.
16 I believe -- I believe we did, but I don't remember exactly how
17 we recorded those hours.

18 Q. You don't remember how they --

19 A. You wouldn't go above eight hours a day if you were working
20 on an eight hours a day, but you recorded up to the eight hours
21 a day, yes.

22 Q. That's for payroll purposes?

23 A. I have no idea. I don't know.

24 Q. Are most PCAOB employees salaried employees?

25 A. I would assume.

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Rodriguez - cross

1 Q. Are you a salaried employee?

2 A. Yes, I am.

3 Q. Are you aware of any employees that aren't salaried
4 employees?

5 A. I don't know if they are there or not.

6 Q. Did you review any documentation about people's salaries in
7 connection with their preparation for your testimony?

8 A. I did.

9 Q. And were those annual salaries?

10 A. I saw an annual salary and I saw an estimated hourly
11 salary, so.

12 Q. Was that based on a 40-hour workweek?

13 A. It was based on the average hours an inspector works in a
14 year.

15 Q. But you didn't see any indication in that review that
16 people were paid hourly; everything you reviewed was salaried
17 based on annual, annual salary?

18 A. That is my understanding.

19 Q. And so you testified as to the supposed cost to the PCAOB
20 of recreating the 2017 list. Do you remember that?

21 A. Yes, I think so.

22 Q. Ms. Mermelstein asked you about that.

23 A. Yes.

24 Q. And so that was an estimate that you -- well, did you come
25 up with that number?

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Rodriguez - cross

1 A. I did not. Our team did. I did not.

2 Q. Who is "our team"?

3 A. The inspection team. We have our hours and we have a
4 schedule that tells us what we are working on at any given time
5 so we have that information.

6 Q. Who calculated the exact numbers?

7 A. I don't know that I know who actually put the schedule
8 together. I don't know that I know that.

9 Q. What did you review to come up with the number?

10 A. I reviewed the schedule that had a listing of everybody's
11 hours and the weeks that they worked on it, so I was able to
12 look at that in comparison to our scheduling system and the
13 records and verify that those in fact were the individuals that
14 were scheduled and when and verify the total in those hours on
15 that schedule.

16 Q. Some of those spreadsheet that you looked at that
17 calculated people's hours were based on people's recollections,
18 correct?

19 A. It was primarily based on the scheduling data, so we knew
20 what they were working on, meeting invites. So we knew who was
21 in what meetings and what time they had put into that. There
22 may have been a piece on recollection; I don't remember it.
23 Whether it was a small piece, so I don't remember that.

24 Q. And did you actually do the math to come up with the hours,
25 times, the particular salaries of employees to add it all up to

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Rodriguez - cross

1 the number that you testified to?

2 A. I sampled within that calculation to test the accuracy,
3 yes.

4 Q. So you audited the numbers?

5 A. The auditor audited, yet.

6 Q. Did you prepare any documentation in connection with your
7 work?

8 A. No, I did not.

9 Q. OK. So there is no notes of your calculations?

10 A. I might have some notes where I verified and checked
11 numbers off as they worked, yes.

12 Q. OK. If there are any notes of those, would you have
13 provided those to the government?

14 A. No, I would not have.

15 Q. Would you still have them?

16 A. I'd have to look. I don't remember.

17 MS. LESTER: For the record, your Honor, we would
18 request that the witness check to see if there are any such
19 notes and that those notes be produced to the defense.

20 THE COURT: We will address that separately.

21 BY MS. LESTER:

22 Q. You talked about, again in your discussion about Government
23 Exhibit 102, that massive spreadsheet, we didn't see all of it
24 because it was so large but we only saw a portion of the
25 issuers that would fit on the screen. But is it fair to say

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Rodriguez - cross

1 that that spreadsheet contains hundreds of issuer names?

2 A. Yes, it is.

3 Q. Is it all the issuers that KPMG performs audits for?

4 A. It should be, yes.

5 Q. And is it your understanding that number is over 700?

6 A. We are in that ballpark, yes.

7 Q. So that spreadsheet ranks -- provides data, rather, for all
8 of the issuers that KPMG works on?

9 A. There is information -- different levels of information for
10 all those issuers, yes.

11 Q. And so when the PCAOB performs its ranking analysis and
12 decides which issuers are going to be subject to inspection,
13 say, in 2017, it still has all the data that it gathered about
14 the other issuers for that year, correct?

15 A. Yes.

16 Q. Because there is a different planning profile spreadsheet
17 for every year -- every inspection year?

18 A. Every year has a separate spreadsheet, yes.

19 Q. And you gather all the same information every year and you
20 put it into that big spreadsheet?

21 A. Intermittent. There are some different variations every
22 year, yes, but for the most part they are similar information.

23 Q. And so when the first selections were compromised, as you
24 put it, couldn't the PCAOB have simply gone to the next 50
25 issuers on its list that it had already compiled?

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Rodriguez - cross

1 A. We didn't necessarily screen an additional 50 issuers so we
2 have data on it but we don't have all of our data and we
3 haven't gone through and evaluated all the factors for those
4 issuers, which is what we had to do as a result of the replan.

5 Q. But all of the data was already in the spreadsheet,
6 correct?

7 A. Not all of it, no.

8 Q. So I believe you testified a moment ago that you did have
9 data for all the issuers on the spreadsheet?

10 A. Yes, we did have some data. We had the data provided by
11 the firm, but we didn't have all the data that we use as part
12 of our planning process.

13 Q. So at what point does the PCAOB decide to stop gathering
14 data about particular issuers?

15 A. We have all the data that the firm provided, or we had,
16 but, for instance, the ERA referrals, we had to have new ERA
17 referrals done. So, that is not necessarily in there. It is
18 in there for the first batch that they picked but then had to
19 be replaced.

20 Q. So how much additional work had to be done from the
21 spreadsheet that already existed in order to get to the new
22 2017 list?

23 A. The additional replan hours was about 2,000 hours.

24 Q. What actually had to be done in those 2,000 hours?

25 A. You had to rescreen additional issuers that were not

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Rodriguez - cross

1 necessarily screened. You had to go through new ERA referrals.
2 We had to reevaluate those issuers and weigh them against one
3 another. We had to pick focus areas on issuers that we may not
4 have looked at previously. That is a quick list of some of the
5 things we had to do.

6 Q. And so even though the PCAOB had already compiled all this
7 information in that huge spreadsheet that we looked at with
8 many, many numbered tabs and different columns, you are saying
9 that it took 2,000 hours for the PCAOB to come up with a new
10 list?

11 A. Yes, it did.

12 Q. Did you review -- I'm sorry. Just another question on your
13 calculations regarding the cost.

14 You didn't hire any new personnel in terms of working
15 on the 2017 list, right? You worked with the people who were
16 already on staff?

17 A. It was the 2017 inspection team members who worked to do
18 the planning within our team and others within the
19 organization.

20 Q. And those were the same people who are normally involved in
21 the planning for KPMG?

22 A. As far as I know. There are additional, we had more people
23 than normal involved in it, but they were inspection team
24 members.

25 Q. And so those are regular PCAOB employees, salaried

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Rodriguez - cross

1 employees, to your understanding?

2 A. To my understanding.

3 Q. So those are people who would be paid their salary
4 regardless of whether or not they're working on a new 2017 list
5 or something else; they're just regular employees doing their
6 job for the PCAOB?

7 A. Yes.

8 Q. A little bit more on the replacement inspections.

9 We talked earlier about how it's not necessarily the
10 case that every written comment that the inspection team writes
11 up during the course of its inspection or at the end of its
12 inspection is actually included in the Part I section of the
13 report, correct?

14 A. Yes.

15 Q. And isn't it the case that in the replacement inspections,
16 there were nine comments out of ten issuers, correct?

17 A. I'm sorry. What was the question?

18 Q. Did you review the inspection summary memos for the
19 replacement inspections in 2016?

20 A. I did not.

21 Q. You did not?

22 A. The inspection summary memorandums?

23 Q. Yes.

24 A. No, I did not, no.

25 Q. Well, correct me if I am wrong, but I think the government

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Rodriguez - cross

1 showed you some lists that had the issuers that were subject to
2 inspection --

3 A. Yes.

4 Q. -- in various years.

5 A. Yes, that's correct.

6 Q. And some of that data was backed up, according to the
7 little note at the bottom of those exhibits, through inspection
8 summary memoranda?

9 A. That's correct.

10 Q. Which inspection summary memoranda did you review to create
11 those exhibits?

12 A. OK. I'm sorry.

13 I reviewed those. I create the existence of the
14 inspection summary memorandums to the list to verify that those
15 inspections had in fact taken place. I did not perform a
16 detailed review of the information within them as part of the
17 inspection process.

18 Q. Do you have any understanding of the number of the
19 replacement inspections that received comments?

20 A. I believe it was nine out of ten.

21 Q. That's correct. We could look in the report but that's
22 right.

23 A. Yes.

24 Q. And do you have any understanding of the prior year and how
25 many financial services firms had been included in Part I for

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Rodriguez - cross

1 2015?

2 A. In total for any comments? I don't know that I know it off
3 the top of my head, no.

4 Q. That might have been in that chart.

5 (Counsel conferred)

6 So on the replacement inspections, did you take part
7 in those personally?

8 A. No, I did not.

9 Q. Did you review any of the inspection summary memos or weigh
10 in on comments?

11 A. I reviewed comments on one of them.

12 Q. Do you recall which one that was?

13 A. I think it was Heartland, if I can remember correctly.

14 Q. And that comment was included in Part I, correct?

15 A. I think so.

16 Q. Do you know whether there was any effort made to replicate
17 the inspection teams who conducted the original 2016
18 inspections versus the replacement inspections?19 A. No. They were -- no, I don't know. No. We had our
20 banking inspection team do those inspections.21 Q. And had the banking inspection team done the prior year
22 inspections, the original inspections?

23 A. Certain members of that team were probably on both years.

24 Q. But there was no effort to replicate exactly the people who
25 had done the prior inspection -- the original inspection in

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Rodriguez - cross

1 2016 with the replacement inspection?

2 A. Not to my knowledge.

3 Q. And was there any attempt made to ensure that the
4 replacement issuers, the issuers that were the subject of the
5 replacement inspections, were comparable to the original
6 issuers?

7 A. Not to my knowledge, no. They were part of our regular
8 issuer inspection process, selection process.

9 Q. OK. So the pool of issuers that was the subject of the
10 original 2016 inspection -- or I guess it would be the
11 financial institution issuers, to be more precise, when the
12 replacement selections were chosen, there wasn't necessarily an
13 effort to replicate those or to make them comparable?

14 A. They go through the same -- we use the same selection
15 process ever year, so the methodology by which we picked these
16 issuers every year did not change.

17 Q. So the selection process was the same, but in terms of the
18 size of the issuers, for example, or the revenue, was there any
19 effort made to make those numbers comparable to the original
20 pool?

21 A. I don't know if the banking team was involved in that. I
22 am not sure.

23 Q. Were you -- so you were not involved at all in the planning
24 or selection of the replacement inspection issuers?

25 A. No, I was. But the initial work, just look on our planning

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Rodriguez - cross

1 team, is done by the team, and then we work up the review
2 process. The banking inspection team, some of those members
3 are involved in the planning. So I look at it at the review
4 level. So some of that was done before. I am not sure. I
5 don't have knowledge of that.

6 Q. Did you ask any questions about whether the issuers were
7 comparable in the two cycles?

8 A. I don't remember.

9 Q. You don't remember asking any questions?

10 A. I don't remember if I did or if I didn't.

11 Q. Did you make any effort to determine whether the issuers in
12 the replacement inspections had been in monitoring programs?

13 A. So the way the replacement inspections worked were we made
14 selections in '17 and then looked at them in '16. So that is
15 part of our standard review in any year, to look at if they
16 participate in monitoring programs. So, yes, that would have
17 been a piece of it.

18 Q. So you're saying when the replacement inspections were
19 chosen, part of the assessment was whether they were in
20 monitoring programs?

21 A. That would have been a part of the consideration, yes.

22 Q. And was there an effort to make sure that the proportion
23 that were in monitoring programs was the same as they had been
24 during the original 2016 inspections?

25 A. I do not remember.

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Rodriguez - cross

1 Q. You don't remember whether that was done?

2 A. I do not remember if that was done, no.

3 Q. Now, at the time that the replacement inspections were
4 performed, it was public knowledge that the PCAOB had had a
5 leak of information, correct?

6 A. Yes.

7 Q. So the inspection team members knew that the reason that
8 the replacement inspections were being conducted was because
9 the prior years -- the prior inspections, that is, had been,
10 quote, compromised, in your words?

11 A. The public announcement that a firm had already been made,
12 yes.

13 Q. I don't think that answered my question.

14 Did the inspection team members, to your knowledge,
15 know what -- the reason why they were doing the replacement
16 inspections, that is, because of the leak of confidential
17 information?

18 A. On the 10 banks?

19 Q. Yes.

20 A. I don't know if we had a specific discussion with the team.
21 I don't recall one where we discussed that piece of the data
22 being available to the firm.

23 Q. Would you say it was common knowledge that at least one
24 PCAOB employee had been fired as a result of the leak?

25 A. I'm trying to remember what was actually discussed. It may

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Rodriguez - cross

1 have been.

2 Q. Were you aware that there were newspaper articles
3 discussing the fact of the leak and the firing of a PCAOB
4 employee?

5 A. Yes.

6 Q. And were you aware that there were press reports that the
7 incident, that is, the leak, was a, quote, black eye on the
8 PCAOB?

9 MS. MERMELSTEIN: Objection, your Honor.

10 THE COURT: Sustained.

11 Q. Were you aware that there were press reports discussing the
12 leak of confidential information?

13 MS. MERMELSTEIN: Objection. I think this point has
14 been made.

15 THE COURT: Sustained.

16 BY MS. LESTER:

17 Q. So, again, during the course of the replacement
18 inspections, this would have -- in your view -- you were aware
19 of this information at the time of the replacement inspections?

20 A. I was aware.

21 MS. LESTER: May I have a moment, your Honor?

22 THE COURT: Yes.

23 (Pause)

24 BY MS. LESTER:

25 Q. Thank you for your patience. Just one more area, very

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Rodriguez - cross

1 brief.

2 Are you aware that in the 2017 inspection cycle, the
3 PCAOB chose to inspect two years of some issuers' financials --
4 audit, sorry. So, in other words, in the normal course in a
5 PCAOB inspection, you're looking at a single year's audit,
6 correct?

7 A. That is correct, yes.

8 Q. But in 2017, the PCAOB decided to look at two years at
9 once?

10 A. We looked at two years in that current year.

11 Q. Right.

12 A. Mm-hmm.

13 Q. So in 2017, you were looking at 2017 -- 2016 -- no. Sorry.
14 I am messing it up.

15 You explain it. You know what you are talking about.

16 A. I messed these up, too, when I worked there, so I get it.

17 We performed for those reinspections, or additional
18 inspections, we performed an inspection for 2017, and in a
19 separate week we performed an inspection of 2016. So they
20 didn't occur at the same time; there was some time in between
21 them, a little bit of time, but both years of inspections
22 occurred during 2017.

23 Q. So in the same inspection cycle, in other words, you were
24 looking at two different years?

25 A. That is correct, yes.

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Rodriguez - cross

1 Q. And that's unusual, right?

2 A. Yes, it is.

3 Q. Are you aware of that ever being done before?

4 A. Not to my knowledge, no.

5 Q. And would you expect that when that happens, you would see
6 the same mistakes both years?

7 A. Actually, it didn't always happen like that. Sometimes it
8 did; sometimes it didn't.

9 Q. In the normal course, after the inspection, the firm is
10 given feedback obviously, in the form of comments or otherwise,
11 about things it didn't do to the PCAOB's satisfaction, correct?

12 A. That's correct.

13 Q. And the firm then has an opportunity to go back and fix
14 things either as part of its normal audit documentation for
15 that year or in the next years it will incorporate the PCAOB's
16 comments, hopefully, in its audit work, correct?

17 A. That's correct.

18 Q. And the firm didn't have that chance when you inspected two
19 back-to-back, correct?

20 A. Well, it wouldn't have mattered in this instance because
21 the year we tacked on was going back in time. So that work was
22 already done and archived. Typically what happens is if you
23 have an observation in a year, the firm can, you know, fix that
24 year, or going forward they will modify their plan. So because
25 we were going back in time, even though it was '17

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Rodriguez - cross

1 observations, it wouldn't have benefited them because we were
2 going backwards. If that makes sense, if I am explaining that
3 right?

4 Q. Understood.

5 But the point is that looking at two years at once
6 doesn't take into account that in the normal course the firm
7 would try to fix some of the things -- some of its audit work
8 based on the PCAOB's comments, correct?

9 A. So they would still have an opportunity in the normal
10 course to fix it going forward, like they would in any year.
11 What makes this different is we are looking at two years. So,
12 we picked the historical year. So even if we had done another
13 issuer, it would never would have mattered because we were
14 going back in time. Those files were sealed so any observation
15 we had in '17 wouldn't have impacted work that we had already
16 done.

17 Q. But that was totally out of the normal course for you to do
18 that, correct?

19 A. It was different, yes.

20 Q. And it had never been done before, to your knowledge?

21 A. To my knowledge, no.

22 MS. LESTER: No further questions, your Honor.

23 THE COURT: Thank you.

24 Mr. Ohta.

25 MR. OHTA: Your Honor, may we take our afternoon

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Rodriguez - cross

1 ten-minute break.

2 THE COURT: Yes. Why don't we take the ten-minute
3 break, folks. Please leave your pads on your chairs.

4 Come back in ten minutes.

5 (Continued on next page)

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Rodriguez - cross

1 (Jury not present)

2 THE COURT: You can step down.

3 You may be seated.

4 Anything we need to address before the break?

5 MS. KRAMER: Only one issue, your Honor -- just wait
6 one moment.

7 (Pause)

8 Your Honor, the witness was asked questions on
9 cross-examination about whose subpoena certain documents were
10 produced in response to, and if there is any relevance to that,
11 we certainly don't see what it is. And we just ask that no
12 further cross-examination be permitted getting into the inside
13 baseball of who subpoenaed what documents. As your Honor will
14 instruct the jury during your charge, there is no obligation
15 that the government use any specific investigative technique,
16 and this question certainly seems designed to elicit
17 information that is in conflict with that instruction.

18 MR. BOXER: I think it is relevant, your Honor, to
19 show the jury what the government is interested in and not
20 interested in discovering in the case.

21 THE COURT: I don't think it is relevant.

22 MR. BOXER: I don't think it goes to investigative
23 techniques. We're not criticizing their techniques. But I
24 think we are allowed to argue that they didn't bring this to
25 your attention, we did. I appreciate the ruling and will

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Rodriguez - cross

1 obviously adhere to it, but that was the reason why it was
2 elicited.

3 THE COURT: I understand. But it seemed like it
4 stretched. It really goes to prosecutors' strategy and
5 thinking. You know, I don't think it goes to anything other
6 than that and investigative techniques, really.

7 MR. WEDDLE: May I be heard briefly on this issue,
8 your Honor?

9 THE COURT: Yes.

10 MR. WEDDLE: I that it also goes to bias of the
11 witness. As your Honor is aware from -- as we've argued in a
12 number of our submissions to the Court, we think that there is
13 some strategic behavior occurring by the PCAOB --

14 THE COURT: Well, I've let you do plenty with that.

15 MR. WEDDLE: With respect to the documents they've
16 chosen to give to the government and the documents that they
17 haven't, I think we've pointed out the relative paucity of
18 PCAOB documents that we received in discovery and the fact that
19 it's -- you know, takes a lot of work for us to get documents
20 out of the PCAOB. And I think that it's directly relevant to
21 the bias of the witness --

22 THE COURT: It's the government that decided what
23 documents to get from the PCAOB, presumably.

24 MR. WEDDLE: I don't know whether that is true or not,
25 your Honor, because I am confident that if the government asked

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Rodriguez - cross

1 for a document, they would have gotten it. But I suspect -- I
2 mean, we could find out the facts. The lawyers for the PCAOB
3 are here. We could talk to them about discussions between them
4 and the government.

5 I suspect that the lawyers for the PCAOB have made
6 decisions about what they think they should turn over to the
7 government and turned it over to the government voluntarily
8 without the government asking for things, and the government
9 has received the filtered information from the PCAOB without
10 delving further. There is one asterisk that I need to put on
11 that, your Honor, which is that when we received the draft
12 report before it was publicly issued, before it was issued in
13 2019, the draft report for 2016, it had a stamp on it that said
14 it was produced pursuant to a grand jury subpoena and was
15 subject to grand jury secrecy. Now, we've never found out
16 whether that stamp was a mistake or deliberate.

17 Of course, the government is not permitted to issue
18 grand jury subpoenas to prepare for trial. So if there was a
19 grand jury subpoena calling for that document in 2018, which is
20 when we first received it, that would be totally improper. I
21 would welcome a factual proffer from the government and the
22 PCAOB about the circumstances of that grand jury subpoena
23 stamp, because I think that that is relevant to this entire
24 issue of PCAOB bias.

25 THE COURT: Ms. Mermelstein.

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Rodriguez - cross

1 MS. MERMELSTEIN: I don't know that a response is
2 required. This is a fishing expedition that lacks, I think,
3 any basis in fact. One, Ms. Rodriguez was not responsible for
4 producing documents from the PCAOB. There are lawyers who are
5 charged with that. So, I really can't see how it goes to her
6 bias in literally any fashion.

7 Mr. Weddle is quite right that I am not going to
8 answer questions about the government's process except to say
9 generally that a subpoena can be issued and continue to be open
10 and so they can be produced in response to it later without
11 violating any kind of trial and grand jury subpoena rules.

12 The defendants have subpoena power. They have
13 exercised that power. They have gotten documents from the
14 PCAOB. As your Honor is aware, and as the government has
15 experienced, the PCAOB is very sensitive about this
16 confidential information and has striven to limit productions
17 only of that which is necessary to protect their confidential
18 information. The whole thing is irrelevant and shouldn't be
19 before the jury.

20 And if the defendants feel there is a document that
21 they subpoenaed and didn't get, I think that is an issue for
22 them to take up with the PCAOB and the Court. I am not aware
23 that that has happened. But I think this is just a frolic and
24 detour that doesn't have any relevance to the trial and it
25 doesn't have any real support.

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Rodriguez - cross

1 THE COURT: The argument is not that this witness is
2 biased but the whole PCAOB is biased when a decision was made
3 from some in-house counsel at the PCAOB about what to produce
4 and not produce. I am just not persuaded that it has
5 relevance.

6 MR. WEDDLE: May I add a couple of points, your Honor?

7 THE COURT: Sure.

8 MR. WEDDLE: One is the prosecutor just referenced the
9 fact that documents can be produced pursuant to an old
10 subpoena. That is not true with respect to documents that are
11 created after the subpoena was issued. If a prosecutor used a
12 subpoena prospectively, that would be an illegal warrant, your
13 Honor.

14 So if a subpoena is issued and there is a rolling
15 production of documents in response to the subpoena, the
16 subpoena only calls for documents that are in existence on the
17 date the subpoena is issued. To ask for the subpoena to cover
18 future-created documents is illegal. So, that would not be a
19 proper use of a grand jury subpoena, and it would be inaccurate
20 to say that a document created after the subpoena was issued
21 was produced in response to a grand jury subpoena.

22 That is one point.

23 Another point is Ms. Rodriguez's testimony, I believe,
24 was in part elicited to show the discrepancy or the comparison
25 between reviews in 2016 that were done at the time and

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Rodriguez - cross

1 rereviews. And part of our argument is that the PCAOB,
2 including this witness, but not limited to this witness, has
3 its own bone to pick with these defendants and has its own
4 motivation to make the conduct look as bad as possible.

5 THE COURT: I know. And I've allowed some of that. I
6 think you've been able to make those points. But I just don't
7 see how whether a document came through a subpoena or from the
8 government's production really goes to that in a reliable way
9 and in a way that isn't really going to investigative
10 techniques.

11 I don't know about your grand jury issue. That might
12 be a separate issue. I'm not familiar with that. And if there
13 is a separate application or something I need to decide on
14 that, I will.

15 MR. WEDDLE: Well, I mean, I suppose I can submit a
16 letter. It sounds to me -- and I may be misreading the oral
17 presentation, but it sounds to me as if the PCAOB and the
18 prosecution team believe that a document created after the
19 execution of a grand jury subpoena was produced in response to
20 a grand jury subpoena, which is improper.

21 (Continued on next page)

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Rodriguez - cross

1 THE COURT: Do you have a response?

2 MS. MERMELSTEIN: While I am not permitted to discuss
3 whether or not a grand jury subpoena has in fact issued so I do
4 not have a response, except to say that I don't think that
5 Mr. Weddle and Mr. Wada's defense team have any remedy to the
6 extent they are making any kind of supposition about what may
7 have happened and I think this is sort of just, as I have said,
8 a fishing expedition. The documents are what the documents are
9 and I think there is nothing else to discuss with respect to
10 that. If Mr. Weddle wants to file a letter, he is certainly
11 welcome to do so. I can represent to the Court in a general
12 fashion that there has, of course, been no misuse of the grand
13 jury process and the subpoena process by the government in this
14 case. Period. And I think, given the timing, perhaps we could
15 take a bathroom break and resume and then take this up after
16 the jury is gone for the day, if there is anything to take up,
17 which I don't know that there is.

18 MR. WEDDLE: One very brief point, your Honor?

19 THE COURT: Yes.

20 MR. WEDDLE: Rule 6(c) which governs grand jury
21 secrecy does not apply in the course of a judicial proceeding.
22 Here we are in court. There is nothing preventing the
23 prosecution from discussing with your Honor in the context of
24 this hearing, right now, what they've done with respect to
25 grand jury subpoenas.

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Rodriguez - cross

1 THE COURT: We will talk our break and then we will
2 continue this at the end of the day.

3 (recess)

4 THE COURT: Please, be seated.

5 Ready for the jury?

6 MR. OHTA: Yes, your Honor.

7 (Continued on next page)

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Rodriguez - cross

1 (Jury present)

2 THE COURT: Please, be seated.

3 Good afternoon, folks.

4 THE JURY: Good afternoon.

5 THE COURT: Cross-examination of the witness,

6 Mr. Ohta.

7 MR. OHTA: Thank you, your Honor.

8 CROSS EXAMINATION

9 BY MR. OHTA:

10 Q. Good afternoon, Ms. Rodriguez?

11 A. Hi.

12 Q. My name is Jason Ohta and I represent Mr. Wada.

13 I first want to talk about your preparation for trial
14 today, your testimony?

15 A. Okay.

16 Q. When was the first time you met with the federal
17 prosecutors seated to my left?18 A. I think it was around January 15th, 16th. Somewhere in
19 that area.

20 Q. How long did you meet for?

21 A. I think that meeting was about four hours, five hours.
22 Something around that time frame.

23 Q. Were all three federal prosecutors present?

24 A. Rebecca Mermelstein was there; Amanda was there, I don't
25 remember if she was in there the entire time. I don't remember

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Rodriguez - cross

1 if Jordan was in the meeting or not.

2 Q. Any case agents in the prep session with you?

3 A. Yes.

4 Q. What are their names?

5 A. I leave it is Lyeson. I'm not sure of his last name.

6 Q. Anybody else?

7 A. Not that I'm aware of.

8 Q. After that meeting, around mid-January, did you have any
9 other meetings in preparation for your testimony?

10 A. I did.

11 Q. When was the --

12 A. I believe it was two weeks later we met again.

13 Q. Did you meet with the same people?

14 A. Yes.

15 Q. How long was that meeting for?

16 A. About the same time frame. About four hours was a good
17 estimate.

18 Q. Was this an in-person meeting?

19 A. Yes, it was.

20 Q. Did you have another meeting after the meeting we just
21 discussed?

22 A. Yes, I did.

23 Q. When was that meeting?

24 A. We met last week also.

25 Q. Approximately how long did you meet for?

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Rodriguez - cross

1 A. I think it was somewhere between, around the three-hour
2 time frame.

3 Q. Was this meeting in person also?

4 A. That was not, no.

5 Q. Teleconference?

6 A. Yes.

7 Q. Did you have another meeting before your testimony here
8 today?

9 A. Yes. There was another meeting last week also;
10 teleconference, not in person.

11 Q. How long was that meeting for?

12 A. About the same time frame.

13 Q. About three hours?

14 A. Three, four hours; yes.

15 Q. Was it right after each other or was there a day in
16 between, do you recall?

17 A. There was day in between I recall, I believe.

18 Q. Did you have any other meetings after that meeting?

19 A. We met this week also, yes. This week, yes.

20 Q. When did you meet this week?

21 A. Let me remember. Today is Thursday, so I believe we met
22 Monday night. Monday evening we met.

23 Q. How long did you meet for?

24 A. I think that was about three hours.

25 Q. Were all three prosecutors present for that meeting?

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Rodriguez - cross

1 A. I don't think Amanda was in that meeting that I am
2 remembering.

3 Q. How many case agents were at that meeting?

4 A. I think there was one.

5 Q. Did you have any other meetings?

6 A. There was another meeting this week, yes.

7 Q. When was that meeting?

8 A. On Tuesday.

9 Q. How long was that meeting for?

10 A. I think it was about, maybe, two and a half hours,
11 somewhere around that time frame.

12 Q. So put that on Tuesday. Was that your last meeting with
13 the government?

14 A. No. I met with them also last night for maybe 10, 15
15 minutes.

16 Q. And then now here you are?

17 A. And now I am here, yes.

18 Q. So, we talked about your meetings with federal prosecutors,
19 case agents. In preparation for your testimony here today did
20 you also speak with PCAOB lawyers?

21 MS. MERMELSTEIN: Objection, your Honor. I think it
22 is about to call for privileged communications.

23 MR. OHTA: Your Honor, I am just asking if they met.
24 I will not get into the substance of their conversation.

25 MS. MERMELSTEIN: That's fine, your Honor.

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Rodriguez - cross

1 THE COURT: Okay.

2 You can answer.

3 THE WITNESS: We had phone discussions. We talked on
4 the phone.

5 BY MR. OHTA:

6 Q. No meetings in person?

7 A. No. Not to my memory, no.

8 Q. How many phone calls did you have with PCAOB counsel?

9 MS. MERMELSTEIN: Objection to this line of
10 questioning.

11 MR. OHTA: In preparation for your testimony.

12 THE COURT: Sorry?

13 MS. MERMELSTEIN: I don't see how the extent of the
14 witness' communications with counsel are relevant or
15 appropriate.

16 MR. OHTA: It is in preparation for her testimony,
17 your Honor.

18 THE COURT: Go ahead. You can ask.

19 THE WITNESS: I really don't remember because they
20 were not extensive conversations so I don't remember how long
21 they were because they were very short.

22 BY MR. OHTA:

23 Q. Do you remember the number of phone calls?

24 A. I would be guessing, but it is in the two to three, very
25 short type phone calls.

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Rodriguez - cross

1 Q. I appreciate that. Thank you.

2 Before today, have you ever seen my client before,
3 Mr. Wada?

4 A. I don't remember a specific instance where I would have
5 seen him, to memory. I am sure he might have been in a room I
6 was in, but I don't remember any specific instance, no.

7 Q. Did you ever work with Mr. Wada while at the PCAOB?

8 A. Not in my memory, no.

9 Q. I want to now get into the PCAOB inspection process that
10 you were discussing in your testimony. Ms. O'Connor, I would
11 like to please put up M-245 which has already been admitted
12 into evidence, please. Thank you.

13 Ms. Rodriguez, you recognize this manual, correct?

14 A. I do.

15 Q. And can we turn to the table of contents, please?

16 And please correct me if I am wrong with my
17 generalization of this document, but when you look at the first
18 page, these Chapters 1, 2, and 3, and if you can turn to the
19 next page -- Chapter 4, Preparing for Issuer Inspection,
20 Chapter 5, Performing the Issuer Inspection, Chapter 6
21 Post-inspection Procedures; that this is the handbook for an
22 inspector on -- gives them a rule book on what they should be
23 doing or if they have any questions, this seems to be the
24 manual in which they should consult?

25 A. This is our inspections manual which would have some of the

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Rodriguez - cross

1 policies or procedures we follow as part of our inspections,
2 yes.

3 Q. And you have been testifying to all of these policies and
4 procedures this morning, early this afternoon, correct?

5 A. Yes. We have discussed certain ones, yes.

6 Q. If there was a conflict between what you recall in your
7 testimony and what's listed in this manual, would you agree
8 that the manual would control, as in, if there was a conflict,
9 the manual is the authority?

10 A. I would believe, yes.

11 Q. I want to talk about the number of people on an inspections
12 team, so not the whole KPMG team but the whole team that goes
13 out and inspects an issuer.

14 A. Okay.

15 Q. Generally, how many people are on an inspection team?

16 A. The most common number on the team is probably around five.

17 Q. Which would include inspection specialists?

18 A. Yes.

19 Q. An inspections leader?

20 A. Yes. Yes.

21 Q. And an associate director?

22 A. Yes.

23 So, let me clarify a little bit. So at that time, if
24 we were talking '15-'16, it would be five to six depending how
25 many focus areas you were looking at. Often times there would

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Rodriguez - cross

1 be a location leader, an inspection leader and then inspection
2 specialists reviewing the areas, yes.

3 Q. And then the location leader, pursuant to the, I believe
4 the manual we just had up for U.S. firms, has to be an
5 associate director or above, correct?

6 A. No. We can also, inspection leaders also serve as location
7 leaders.

8 Q. Is that for U.S. firms or global or non-U.S. firms?

9 A. U.S. firms also.

10 Q. And that's for 2015 and 2016?

11 A. Yes. To my memory, yes.

12 Q. You talked about focus areas. Do the inspection
13 specialists generally look into the focus areas on an
14 inspection?

15 A. Yes. They generally are the ones performing the inspection
16 of a focus area, yes.

17 Q. And if there was an associate director on the team then the
18 inspection leader would assist that associate director,
19 correct?

20 A. Sometimes they assisted, sometimes they had their own focus
21 area depending on the actual areas we were looking at and
22 complexity, what have you.

23 Q. So, for the time that there was an associate director on a
24 team, generally speaking they would have, or to put it another
25 way, they're the boss, right?

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Rodriguez - cross

1 A. They do run the inspection, yes.

2 Q. Ms. O'Connor, can you please pull up M-245, page 9, please?
3 And can you highlight where it says Direction of Inspection
4 Teams; that paragraph, please?

5 Just for my clarity the second sentence, would you
6 please read the second sentence for me, Ms. Rodriguez?

7 A. Yes.

8 *The inspection of a U.S. firm is under the direction
9 of a firm inspection team leader who may be at the level of
10 deputy director, regional associate director, or associate
11 director.*

12 Q. So you previously testified that there could be an
13 inspections leader but I just want to make sure I am reading
14 this correctly. When I was reviewing this memo or this manual,
15 it seems like only an associate director can be the leader of
16 inspection of a United States firm.

17 A. So, when we were talking about five to six people, we are
18 talking about the inspection of an issuer. So, that's
19 something that's actually happening out in the field when we go
20 to a firm office and do an issuer inspection, that can be an
21 associate director or an inspection leader, typically.

22 What this manual is referring to is the inspection of
23 the U.S. firm, so the inspection of KPMG U.S. That is
24 restricted to deputy director regional associate director, or
25 associate director.

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Rodriguez - cross

1 Q. Thank you.

2 Would you please turn to page 26, Ms. O'Connor? Thank
3 you.

4 You previously testified about the notification of
5 selections to the firm and I just want to talk a little bit
6 about this portion of an inspection.

7 A. Sure.

8 Q. Thank you.

9 I am trying to save you time. The first sentence is
10 really long so the third line down where it starts: *It is*
11 *preferred...* after the comma.

12 A. Yes.

13 Q. Can you read that portion of the sentence?

14 A. Sure.

15 *It is preferred that the U.S. firm team leader provide*
16 *the firm with early notification of the offices that the field*
17 *inspection teams will be visiting and expected dates of those*
18 *inspections.*

19 Q. Just looking at the language, "it is preferred," that means
20 it is not mandatory, correct?

21 A. Correct.

22 Q. It's the supervisors, deputy director, assistant, whoever
23 the leader is, it is their decision whether or not to give this
24 early notification to a firm?

25 A. I would interpret that to say that the program as a whole

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Rodriguez - cross

1 prefers to you give this notice to the firm of where we are
2 going to be and what days we are going to be there.

3 Q. And at this point -- I called it early notification but at
4 this point it says early notification in the section but you
5 are just telling the firm about the geographic location of the
6 inspection, correct?

7 A. That's correct, yes.

8 Q. Would you please highlight the next sentence, please,
9 Ms. O'Connor?

10 I will read this: *However, through this early*
11 *notification process, the firm must not be informed of the*
12 *specific engagements selected for inspection.*

13 Again, can't tell the firm about the issuer, correct?

14 A. That's correct, yes.

15 MR. OHTA: Your Honor, may I have moment with the
16 prosecution?

17 THE COURT: Yes.

18 (Counsel conferring)

19 BY MR. OHTA:

20 Q. Ms. O'Connor, just for counsel and the judge, would you
21 please put up Defendant's Exhibit 1523?

22 Do you see the exhibit, Ms. Rodriguez?

23 A. Yes, I do.

24 Q. Can you please scroll down to the bottom portion of the
25 e-mail? Thank you.

J2E5mid6

Rodriguez - cross

1 Ms. Rodriguez, is that your name in the "from line" in
2 this e-mail?

3 A. Yes, it is.

4 Q. Dated April 27, 2016?

5 A. Yes.

6 Q. Is that your correct e-mail address in the from line?

7 A. Yes, it is.

8 Q. Were you the associate director, registration and
9 inspections of the PCAOB at this time?

10 A. Yes, I was.

11 Q. And the e-mail is sent to Thomas Whittle and it is copying
12 Steve Schindler, correct?

13 A. Yes. That's correct.

14 Q. And the subject is schedule?

15 A. Yes.

16 Q. Did you send this e-mail in the regular course of your job
17 responsibilities at the PCAOB?

18 A. Yes, I did.

19 Q. Do you have any reason to doubt the accuracy of the
20 statement contained in this e-mail?

21 A. No, I do not.

22 MR. OHTA: Your Honor, we move Defendant's Exhibit
23 1523 into evidence.

24 MS. MERMELSTEIN: No objection.

25 THE COURT: 1523 is received.

J2E5mid6

Rodriguez - cross

1 (Defendant's Exhibit 1523 received in evidence)

2 BY MR. OHTA:

3 Q. Can you go to the second page, please? Third page?

4 Ms. Rodriguez, this spreadsheet was attached to the
5 e-mail. Can you explain why you sent this e-mail to
6 Mr. Whittle?

7 A. Yes.

8 This is the schedule we talked about, we talked about
9 a couple times where we would give the firm notice of what
10 weeks we would be performing field inspections and then the
11 actual location we would be from the business unit or the
12 office and region to help them for planning purposes on
13 allocating their resources.

14 Q. And this is what we just discussed, this is the
15 notification to the firm of the locations of the inspections,
16 correct?

17 A. That's correct, yes.

18 Q. No issuers?

19 A. No issuers.

20 Q. At this time, if you or someone notified KPMG of the
21 specific issuer, would you have an issue with that?

22 A. I'm not sure I understood the question.

23 Q. So, on April 27, 2016, you sent this list to KPMG and you
24 told KPMG the locations of these various inspections, right?

25 A. Right.

J2E5mid6

Rodriguez - cross

1 Q. And you have also received that, generally speaking, when
2 you give KPMG official notice of the exact issuer, that's
3 approximately two to four weeks before you go out to visit?

4 A. Yes. That should be. Yes.

5 Q. So, if I look at these dates where it says the week, these
6 are the weeks that you have identified that KPMG U.S.
7 inspection team would go out and conduct these inspections?

8 A. Yes.

9 Q. So, if you were to go backwards and maybe I will pick a
10 date, if you are looking at 8/15, you would count back two to
11 four weeks which would be the appropriate time for your team to
12 send out the official notification that a specific issuer was
13 going to be inspected, correct?

14 A. Yes.

15 Q. Is there any circumstances where your team could give five
16 weeks' notice and it would be okay pursuant to PCAOB policy?

17 A. I don't know that that would be an issue if there was a
18 reason. I don't know why we would do that so I don't have a
19 memory of that having occurred.

20 Q. I appreciate you don't have a memory of when it occurred
21 but right now would you have a -- would that be an issue, like
22 a violation of confidentiality or anything like that?

23 A. Right.

24 Well, what can happen is we may notify of an
25 inspection and that timing doesn't work and then we have to

J2E5mid6

Rodriguez - cross

1 push it back further in the year, continue to do the
2 inspection. So, if you looked at that initial notification to
3 when it maybe occurred, there could be a difference there
4 because of a scheduling issue working through something with
5 the firm.

6 Q. Sure, and that, you don't have a problem with that from
7 when I say you, from a PCAOB perspective?

8 A. No. In that instance that wouldn't be an issue.

9 Q. So, in those cases you notify the company of the issuer two
10 to four months in advance and then for some reason it needs to
11 get pushed back?

12 A. Two to four weeks.

13 Q. Sorry, two to four weeks?

14 A. Yes, that can occur.

15 Q. And then it can get pushed back a week, two weeks, three
16 weeks?

17 A. It can happen. It is not common at all that that happens,
18 but it can occur.

19 Q. That is not something where, from your position at the
20 PCAOB, you would say that because the audit has been pushed
21 back or because the inspection has been pushed back you
22 wouldn't say the audit is bad or I'm not getting a correct
23 representation of the work papers because instead of it being a
24 two to four-week notice period, it has now been extended to
25 maybe six, seven, eight weeks, correct?

J2E5mid6

Rodriguez - cross

1 A. In a vacuum I don't think that that, in and of itself,
2 causes a problem.

3 Q. So now I am still looking at the attachment and I want to
4 focus your attention on the July 11th date for the office in
5 Irvine, California.

6 A. Okay.

7 Q. So, we have July 11th we are coming out to Irvine,
8 California, and we need an additional week of time and we are
9 going to come out on July 25th, 2016; is that correct?

10 A. Yes.

11 Q. And the office that you are giving KPMG notice of is
12 Irvine, California; correct?

13 A. Yes.

14 Q. Were you aware, at this specific moment in time in July of
15 2016, that KPMG only had one financial services client located
16 in Irvine, California?

17 A. I do not remember, no.

18 Q. So, I see it again, the X says financial services company
19 so that's where I came to my conclusion, this is a financial
20 services company in Irvine, California.

21 Would you agree with my interpretation?

22 A. That is what the schedule says, yes.

23 Q. So, since KPMG has only one client in Irvine, California
24 aren't you --

25 MS. MERMELSTEIN: Objection. The witness just said

J2E5mid6

Rodriguez - cross

1 she did not know that.

2 THE COURT: Sustained.

3 BY MR. OHTA:

4 Q. Then I will talk in hypotheticals.

5 Assuming that KPMG had one client that was a financial
6 services client in Irvine, California, would you consider this
7 notification to be a violation of PCAOB policy because the
8 notice is given about two and a half months in advance?

9 A. I don't know when the notice was given.

10 Q. The notice is given because there is only one client.

11 Again, my hypothetical, assuming there is one client, that on
12 4/26, 2016, or -- sorry.

13 On April 27, 2016, when this e-mail was sent to
14 Mr. Whittle at KPMG, that the PCAOB is giving notice to KPMG
15 two and a half months in advance that you guys will be
16 inspecting their one client in Irvine, California.

17 A. We don't include any issuer names on this schedule and I'm
18 not -- I don't know how many issuers would be in that office so
19 it is hard to conclude that this would be a violation of
20 policy.

21 Q. That's fair, but for purposes of just this discussion I am
22 asking you to assume that's the case. I'm not saying you know
23 that.

24 A. Right.

25 Q. You have already said you don't know that. But, just

J2E5mid6

Rodriguez - cross

1 assuming that there is one issuer and that I would be able to
2 show that later but just there is one issuer in Irvine,
3 California, would you consider this notice to be a violation of
4 PCAOB policy because you are essentially giving notice two and
5 a half months out?

6 A. We don't include issuer names and it depends what we are
7 talking about with financial services versus bank and insurance
8 companies.

9 So, it is very hard to -- it is not a violation
10 because we don't have the issuer names, but financial services
11 is broad so it's hard to determine -- it is a hard question in
12 the hypothetical, if that makes sense. We don't have any
13 issuer names on here so it is not a violation of the policy.
14 What it tells them is hard in the hypothetical because I don't
15 know what that makeup is in that office.

16 Q. I'm just asking you to assume it's one client. It can only
17 be one client. I'm trying not to say the name because -- one
18 client.

19 MS. MERMELSTEIN: Asked and answered, your Honor.

20 THE COURT: Sustained.

21 BY MR. OHTA:

22 Q. But it would be fair to say that, because we have gone over
23 this, two and a half months, that would be improper notice if
24 you are giving KPMG two and a half months' notice of a specific
25 issuer that you were going to inspect?

J2E5mid6

Rodriguez - cross

1 MS. MERMELSTEIN: Asked and answered, your Honor.

2 THE COURT: Overruled.

3 THE WITNESS: May I answer?

4 THE COURT: You can answer, yes.

5 THE WITNESS: Oh.

6 I don't know that the manual tells you exactly what
7 those weeks are. I would have to look at the manual if it
8 tells you you cannot notify more than a certain amount of time.

9 So, to conclude it is a violation of policy I would
10 have to know each component of the policies, it doesn't have
11 issuer names. So, from just this review it doesn't appear to
12 be but I don't know -- I would have to look at the other pieces
13 of the policy and see if in fact --

14 Q. And I am really not trying to trick you.

15 A. No, I understand.

16 Q. You previously testified that if you are going to give the
17 names of an issuer because you need to protect the integrity of
18 an audit and you want to get a proper snapshot of what things
19 look like, you have testified that the notice you give is
20 between two to four weeks?

21 A. That's our custom, yes. That is customary with what we do,
22 yes.

23 Q. Two to four weeks?

24 A. Yes.

25 Q. If someone at the PCAOB were to give KPMG notice of an

J2E5mid6

Rodriguez - cross

1 inspection of a particular issuer two and a half months out,
2 that would be a problem?

3 MS. MERMELSTEIN: Objection to form and asked and
4 answered.

5 THE COURT: You can answer if you understand the
6 question.

7 THE WITNESS: I don't know that it is a violation of
8 policy because I don't see where it is written that this is
9 prohibited from telling them that but I also don't conclude
10 that this is telling them the issuer. So, that's what's very
11 hard. It is a hypothetical that I'm not sure exists.

12 BY MR. OHTA:

13 Q. You also discussed communications with teams regarding
14 planning or maybe -- let me rephrase. When you are working on
15 KPMG U.S. matters and doing the planning to inspect issuers I
16 think you testified that there would be no reason for someone
17 on an inspection team to look at what another inspection team
18 is doing for another big Four firm, correct?

19 A. Yes. Yeah.

20 Q. Is that your preference or is that actual PCAOB policy?

21 A. So, it's confidential what is happening within the
22 engagement, within our inspection teams and how we discuss
23 that, that's what's reinforced within practice within the
24 organization. All of what we are doing is part of planning is
25 confidential and we reinforce within our teams, that our team

J2E5mid6

Rodriguez - cross

1 discussions are confidential.

2 Q. And when you say confidential in how you are using it,
3 confidential from even within people within the PCAOB?

4 A. Yes. We don't discuss selections within one team with
5 another, yes.

6 Q. All being PCAOB employees, correct?

7 A. Uh-huh.

8 Q. So you are not just talking about public versus non-public?

9 A. Correct. Yes.

10 Q. Ms. O'Connor, can we please pull up M-245 again, page 24?

11 The third paragraph, please, that one sentence? Can you
12 highlight that for me?

13 Ms. Rodriguez, can you please read that sentence for
14 the jury?

15 A. Yes.

16 *The inspection team should coordinate the selection of
17 broker-dealers that are issuers with the broker-dealer
18 inspections program.*

19 Q. I believe you testified yesterday that there are three
20 programs within the PCAOB; is that correct?

21 A. That's correct, yes.

22 Q. The GNF program is a Global Network Firm program?

23 A. Yes.

24 Q. And then the broker-dealer program?

25 A. Yes.

J2E5mid6

Rodriguez - cross

1 Q. And then something that started with an N. I don't know
2 the other one.

3 A. NAF, the Non-Affiliate Firm program.

4 Q. Thank you.

5 So, what you just read to the jury, the inspection
6 team should coordinate -- and this is the GNF manual -- the GNF
7 inspection team should coordinate the selection of brokers and
8 dealers that are issuers with the broker-dealer inspections
9 program.

10 That seems to me that this manual is actually
11 encouraging coordination between two separate inspections teams
12 from different programs; is that accurate?

13 A. So, what this is saying is that the program is also
14 organized like we are, according to team, so we will coordinate
15 with the KPMG broker-dealer team and the KPMG U.S. team for
16 scheduling purposes because we often work together. So, it is
17 not with another firm's broker-dealer program, it is all within
18 the KPMG umbrella. We talk with our KPMG teams.

19 Q. But different programs, though, correct?

20 A. Yes, we do. We will coordinate being in the field or we
21 coordinate some work that we will share together, yes, with the
22 KPMG broker-dealer team.

23 Q. Sticking with the notification I want to talk a little bit
24 about the 45 day rule.

25 A. Yes.

J2E5mid6

Rodriguez - cross

1 Q. You can take it off, Ms. O'Connor. Thank you so much.

2 General policy of the PCAOB is you are going to give
3 notice to KPMG after the 45-day documentation period, correct?

4 A. Yes. That's correct.

5 Q. That is because you want to keep that snapshot of the
6 workpapers that are closed after the 45 days, right?

7 A. Correct.

8 Q. But then you testified that in some instances there can be
9 a scheduling mistake where the PCAOB gives notification a
10 couple days or within the 45-day period; is that accurate?

11 A. It has occurred that it happened a couple of days off. It
12 doesn't happen every year, it just has occurred. I have seen
13 it happen. It is a very rare situation but it has happened,
14 yes.

15 Q. And as I said --

16 A. Yes, it has.

17 Q. And then I think you testified that when those occasions
18 happened you would notify the firm, KPMG, or another Big Four
19 firm, that we made this mistake. Please document any changes
20 that you have, if you make any changes, to the audit file,
21 correct?

22 A. Correct.

23 So, the 45-day is a maximum so they could archive
24 before that. And so, we will check when the file is archived
25 and there may be no issue because the file is archived there

J2E5mid6

Rodriguez - cross

1 could have been no changes. So, we do that in the event that
2 the file has not been archived. Because it is still at the 45
3 days, we will ask them to give us changes, if that is the set
4 of circumstances we are dealing with.

5 Q. I didn't want to interrupt you.

6 Objection, your Honor. Non-responsive, move to strike
7 after the answer "correct."

8 THE COURT: I think she was just clarifying her
9 answer.

10 So, go on.

11 BY MR. OHTA:

12 Q. That notice that you are giving that, "don't change the
13 work papers," that is already an auditing standard, correct,
14 that we have been discussing today?

15 A. The team is allowed to do documentation in that 45 days, so
16 if we are talking about in the 45 days the team can modify
17 documentation. So we want to understand the nature of those
18 modifications, if there are any.

19 Q. Of course, and pursuant to AS 3, firms are allowed to do
20 that?

21 A. Yes, that's correct.

22 Q. And as long as they document it, everything is fine?

23 A. As long as it is not -- the documentation is not
24 documentation of any new work, then that is appropriate, yes.

25 Q. Agreed. All I was asking was if they were supplying with

J2E5mid6

Rodriguez - cross

1 Auditing Standard 3, then it's okay?

2 A. Yes.

3 Q. I want to get into the IIS access. You testified a little
4 bit about IIS?

5 A. Uh-huh.

6 Q. Can you remind the jury, what does IIS stands for again?

7 A. I don't know what it stands for but IIS is our -- it is
8 inspection software so that's where we document all of our
9 inspection procedures from planning, to performance of the
10 inspection, to report writing. It is all contained in that
11 software.

12 Q. Do you receive training as an inspector on how to use IIS?

13 A. I don't remember because that would have been many years
14 ago for me. So, I don't remember.

15 Q. Did you just come and could automatically use it, it is
16 that easy of a software to use?

17 A. No. I'm sure there was training, I just don't remember it
18 because it was quite a few years ago.

19 Q. I understand. Well, I'm going to see if you recognize this
20 document.

21 A. Okay.

22 Q. Ms. O'Connor, can you please put up Defendant's Exhibit
23 1439? The title, it says PCAOB Inspections Information System
24 IIS step-by-step guide. Do you see that?

25 A. Uh-huh.

J2E5mid6

Rodriguez - cross

1 Q. Updated January 11, 2012?

2 A. I see it.

3 Q. Do you recognize this document?

4 A. I don't recognize it.

5 Q. I'm going to find someone who recognizes it.

6 MS. MERMELSTEIN: Objection, your Honor.

7 MR. OHTA: Withdrawn, your Honor.

8 THE COURT: Okay.

9 BY MR. OHTA:

10 Q. Let's talk about access. So, let's talk about KPMG U.S.

11 A. Okay.

12 Q. I think you testified that a member that's on a KPMG U.S.
13 inspection team cannot access IIS to look at another team's
14 workspace in IIS. For example, an inspector for KPMG U.S.
15 can't look at documents from PwC, correct?

16 A. They should not do that, correct.

17 Q. Ms. O'Connor, would you please put up Defendant's Exhibit
18 1439, please? I'm sorry, wrong document. My apologies. Would
19 you please pull up Defendant's Exhibit 1478, please?

20 Ms. Rodriguez, do you recognize this document?

21 A. I don't. I don't remember looking at this or recognize it.
22 It looks like a PCAOB document. I do not remember it or
23 recognize it off the top of my head.

24 Q. Are you familiar -- I'm not speaking about the document,
25 but are you aware that there is policies by the PCAOB regarding

J2E5mid6

Rodriguez - cross

1 the acceptable use of information technology computers,
2 laptops?

3 A. Yes.

4 Q. And you have certain requirements, I'm assuming, correct,
5 of what you can and can't do with those electronic equipment?

6 A. I know they exist. I don't know them off the top of my
7 head, no.

8 Q. If a KPMG U.S. inspector requested access to another firm's
9 workspace in IIS, would that be a violation of PCAOB rules? If
10 you know.

11 A. It depends on the reason for the request for the access.

12 Q. I want to talk just a little bit, because we have been
13 talking about it for, or previously about the costs of planning
14 for these inspections.

15 A. Okay.

16 Q. When you were talking about, in 2015, the cost of the
17 inspections, were you talking about the cost that you were
18 calculating in 2015 or was it the re-reviews that were
19 happening? I didn't understand the timing of what was being
20 discussed.

21 A. I don't know if I understand the question.

22 Q. You mentioned, I think Ms. Mermelstein said man hours and
23 the Judge said staff hours. That is the discussion I am
24 focusing in on.

25 A. Right.

J2E5mid6

Rodriguez - cross

1 Q. So, in what you were calculating, were you calculating the
2 staff hours it took to conduct the re-reviews in 2016 and 2017?

3 A. I believe that what we were discussing was what planning
4 took for, if it was 2015 -- we have discussed a couple numbers
5 so I don't know which one you are referring to, I think it was
6 planning for 2015 but I don't know specifically which one we
7 were talking about at that point.

8 Q. Then I will focus on 2016 because I think --

9 A. Okay.

10 Q. There was a calculation on the re-review for the planning,
11 the amount of hours it took to redo the 2016 --

12 A. Yes.

13 Q. -- banking inspections, correct?

14 A. Yes. Well, the replan is to replan the 2017 inspections.
15 That's the additional time.

16 Q. Sure. Okay.

17 That calculation, was that calculation done around
18 2017 or was it done more recently, like say a couple months
19 ago?

20 A. I believe it was done more recently. I don't know exactly
21 when but it wasn't done in 2017.

22 Q. Were you actually told to run those calculations?

23 A. I wasn't involved in those discussions so I don't know how
24 they originated, where the original discussion of that
25 calculation came from.

J2E5mid6

Rodriguez - cross

1 Q. But at some point in recent memory you were asked to review
2 those figures, correct?

3 A. Yes, I was.

4 Q. And that's what you testified to?

5 A. Yes.

6 Q. Do you know who conducted that review?

7 A. Who prepared them?

8 Q. Yes.

9 A. I don't know who actually did those initial calculations,
10 who was actually doing them in those years.

11 Q. Who presented that information for you to read?

12 A. Who gave that to me, who provided me with those hours?

13 Q. Yes.

14 A. General counsel.

15 Q. For the PCAOB?

16 A. It was PCAOB, yes.

17 Q. Were you explained where those figures came from?

18 MS. MERMELSTEIN: Objection to calls for privilege,
19 your Honor.

20 MR. OHTA: Your Honor, she testified to the number.

21 MS. MERMELSTEIN: I believe she testified as to her
22 own personal knowledge from the documents but not what she was
23 told by a lawyer.

24 THE COURT: I think you can answer the question
25 insofar as you know what went into the calculation. That's it.

J2E5mid6

Rodriguez - cross

1 THE WITNESS: Okay.

2 On my review of those calculations I have an
3 understanding of those hours and where they originated and how
4 they, what the actual time incurred was related to.

5 Does that make any sense? I understand the basis for
6 those hours, how we generated them, and what that work actually
7 meant.

8 BY MR. OHTA:

9 Q. So no one told you what those hours were, you just made
10 your own calculation at that moment looking at the spreadsheet?

11 A. I saw a spreadsheet listing the hours out. I was involved
12 in that work so I know what was happening, who was on the team.

13 I had an understanding of the project because I worked
14 on the project.

15 Q. But, again, the calculation, just to be clear, it happened
16 a few weeks ago, correct?

17 A. No. It was not a few weeks ago.

18 Q. Can you give me a sense of timing?

19 A. I don't know when it originated but it wasn't a few weeks
20 ago. It was a while ago.

21 Q. How about a few months ago? I am trying to get timing.

22 The timing is important. I don't want to bore people but the
23 timing is very important. That's why.

24 A. I don't know when this was actually -- I don't know when
25 this started because I wasn't involved in creating the initial

J2E5mid6

Rodriguez - cross

1 document but it happened last year. It was not a couple weeks
2 ago.

3 I don't know if that makes sense.

4 Q. And then you reviewed the document recently and now you are
5 testifying from your memory on just those figures?

6 A. Yes.

7 Q. Ms. O'Connor, can you please put up Government Exhibit 92?

8 Ms. Rodriguez, I believe you testified that prior to
9 seeing this document on the witness stand you have never seen
10 it before; is that accurate?

11 A. No. I haven't seen it prior to preparing for the trial.
12 It wasn't just on the witness stand. Today was not the first
13 time. I think they had asked if I had seen it prior to
14 preparation for the trial.

15 Q. So when was the first time you had seen this document?

16 A. It was in discussions with the prosecution. It was in
17 preparation for my testimony today.

18 Q. In one of these prep sessions that we went over in the
19 beginning?

20 A. Yes.

21 Q. That was the first time?

22 A. That was the first time I had seen that, yes.

23 Q. Did you have an opportunity to speak with Mr. Chris Ren who
24 was the person who grabbed this screenshot that you are
25 reviewing on your screen right now?

J2E5mid6

Rodriguez - cross

1 A. No, I did not.

2 Q. Counsel showed you some documents --

3 THE COURT: Excuse me. We are going to have to take a
4 quick break. One of the jurors has to go to the bathroom so I
5 will release the jurors for five minutes and then we will
6 continue. Okay? Please leave your pads on your chairs.

7 MR. OHTA: Thank you, your Honor.

8 (Continued on next page)

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J2E5mid6

Rodriguez - cross

1 (Jury not present)

2 THE COURT: You can be seated.

3 MS. MERMELSTEIN: Your Honor, we have conferred with
4 defense counsel and understand that they have no more than 20
5 minutes and that the government will have just a very few brief
6 minutes for redirect so that we can get Ms. Rodriguez home. We
7 will wrap up the redirect as quickly as possible but if goes to
8 5:03 we won't propose ending given the schedule, if that's all
9 right, if we go just a very few minutes over the trial day. I
10 understand that's okay.

11 THE COURT: Sure. That's fine.

12 And then, just to confirm while we are on the topic of
13 schedule, I will tell the jury that we are not sitting tomorrow
14 and we are not sitting Monday so we will see them Tuesday
15 morning.

16 (Recess)

17 (Continued next page)

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J2edmid7

Rodriguez - cross

1 (Jury present)

2 THE COURT: Please be seated.

3 Mr. Ohta, you may proceed.

4 MR. OHTA: Thank you, your Honor.

5 BY MR. OHTA:

6 Q. Looking at Government 92, Ms. Rodriguez.

7 A. Yes.

8 Q. I want to call your attention to the first document you
9 testified to. It is the copy of EY 2017 issuer screening
10 template. Do you see that?

11 A. I do.

12 Q. I believe you testified that you reviewed this document, is
13 that correct?

14 A. Yes.

15 Q. Now, when you say you reviewed this document, was the
16 document the document from this spreadsheet or some other
17 document located in another place?18 MS. MERMELSTEIN: Objection to form. I don't know
19 what that question means.

20 THE COURT: Could you try to clarify, please?

21 MR. OHTA: Of course, your Honor.

22 BY MR. OHTA:

23 Q. Where did you review this particular document that is up on
24 your screen, the copy of the EY 2017 issuer screen template
25 XLSX?

J2edmid7

Rodriguez - cross

1 A. I reviewed that in preparation for my testimony today with
2 the prosecutors. I was shown that document.

3 Q. You were shown this document by the prosecutors?

4 A. That is my understanding.

5 (Counsel conferred)

6 Q. When you were shown this document, was PCAOB counsel in the
7 room during this preparation session?

8 A. No.

9 (Pause)

10 Can I clarify that? Did you mean internal counsel or
11 external counsel?

12 Q. PCAOB counsel. It could be internal or external.

13 A. My attorneys were present, who also represent the PCAOB,
14 so, yes.

15 Q. Is that Mr. Nitz?

16 A. Yes.

17 Q. Would your review of this particular document, was it at
18 PCAOB headquarters or was it in the United States Attorney's
19 office?

20 A. It would have been in the United States Attorney's office.

21 Q. And was it represented to you -- or how was it represented
22 to you that you were reviewing the particular document
23 identified in this exhibit?

24 A. I believe they just said let us show you this document.

25 They just showed me that document. There wasn't a lot of intro

J2edmid7

Rodriguez - cross

1 to it. It was just we're going to show you this document.

2 Q. And do you happen to recall, when you opened up the -- or
3 when you were reviewing this spreadsheet, what it said on the
4 top?

5 A. No, I don't remember that.

6 Q. So even if it said copy of Jason Ohta party for his two
7 kids XLSX?

8 A. I don't believe it said that because I would have noticed
9 that. There was nothing in there that led me to believe this
10 was not in fact the documents that I was looking at.

11 Q. Do you remember if it said "copy of" by any chance?

12 A. I don't. I don't remember.

13 Q. I think you also testified that you looked at the 2017 U.S.
14 inspection Top 30, is that accurate?

15 A. Yes.

16 Q. Again, you don't remember if that spreadsheet had "copy of"
17 on top of the -- in the title?

18 A. Yes. On the name of the document, I don't remember that,
19 no.

20 Q. Did your attorneys at least tell you that the documents
21 they were purporting to show you matched up with Government's
22 Exhibit 92?

23 A. Yes. They said let us show you this document or we'll look
24 at this document, yes.

25 Q. And I want to be clear. Mr. Ren was not present for these

J2edmid7

Rodriguez - cross

1 meetings with the prosecutors and PCAOB counsel, correct?

2 A. No. I have not met Mr. Ren.

3 MR. OHTA: Ms. O'Connor, could you please put up
4 Government's Exhibit 184, which I will renumber Defense Exhibit
5 1535.

6 Q. Ms. Rodriguez, would you please review the document and
7 tell me if you recognize it.

8 (Pause)

9 A. This appears to be the minutes from that monthly meeting.

10 Q. And do you see your name on the first page where it says
11 "PCAOB personnel"?

12 A. Yes.

13 MR. OHTA: Your Honor, we move Defense Exhibit 1535
14 into evidence.

15 THE COURT: 1535?

16 MR. OHTA: Yes, Defense Exhibit 1535.

17 THE COURT: 1535 is received.

18 (Defendant's Exhibit 1535 received in evidence)

19 BY MR. OHTA:

20 Q. Will you please look at the date of the meeting. It says
21 January 24, 2017, correct?

22 A. Yes.

23 Q. And I would like to go down under "Inspection update." It
24 looks like there are some script with people --

25 A. Mm-hmm.

J2edmid7

Rodriguez - cross

1 Q. -- or text.

2 Can you highlight the Steve Schindler part, the first
3 paragraph.

4 Do you remember this meeting?

5 A. I don't remember the meeting.

6 Q. I will read the Steve Schindler part.

7 Who is Steve Schindler again?

8 A. Steve Schindler is the U.S. firm team lead at that time.

9 Q. It says: "Good morning. We have a short agenda today.

10 The first item on the agenda that I want to make you aware is
11 that we have formed a new group we call the Banking Inspections
12 Group, known as BIG."

13 Does that refresh your memory about what was discussed
14 at that meeting?

15 A. I just don't remember the meeting. I have no reason to
16 believe it didn't occur, but I don't remember the specific
17 meeting.

18 Q. Do you recall if this was the first time that the PCAOB
19 notified KPMG of this new Banking Inspections Group?

20 A. I don't know if this was the first time.

21 MR. OHTA: Ms. O'Connor, can you please go to the next
22 page and highlight the top two, on Mr. Whittle and
23 Mr. Schindler.

24 Q. Do you know who Mr. Whittle is?

25 A. I do.

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Rodriguez - cross

1 Q. At this time, what was his position at KPMG?

2 A. I don't know -- I don't remember the exact title, but he
3 was the head of inspections for KPMG.

4 Q. And he says: "Is part of what you want to gain is having
5 the same individuals do inspections across all the firms so
6 they could have a better perspective and are leveraging their
7 skill set?"

8 And Mr. Schindler says, "Yes, that's correct."

9 A. Yes.

10 Q. Is that your understanding of what the Banking Inspections
11 Group, why it was formed?

12 A. Yes.

13 Q. I know my time is ending so I just have two more things to
14 cover. This will be very short.

15 I would like to talk about the PCAOB employees who
16 have left work, or have left the PCAOB for KPMG.

17 A. OK.

18 Q. And I am going to give you some names. I just want to know
19 if you are aware that they left the PCAOB for KPMG.

20 A. OK.

21 Q. Adrian Aguilar?

22 A. I don't know who that is.

23 Q. Anand Tailor; T-a-i-l-o-r, A-n-a-n-d?

24 A. I don't remember that individual.

25 Q. Brian Sweet?

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Rodriguez - cross

1 A. Yes.

2 Q. Christopher Semesky, S-e-m-e-s-k-y?

3 A. I don't remember that individual.

4 Q. Cynthia Holder?

5 A. Yes.

6 Q. Hector Santana?

7 A. Yes.

8 Q. Louann Sakala?

9 A. Yes.

10 Q. Michael Tucker?

11 A. I don't know that I knew Michael Tucker. I remember that.

12 Q. Robert Larson?

13 A. I know that I knew Rob Larson was at KPMG.

14 Q. Brian Adams?

15 A. I don't know that I knew that Brian Adams was at KPMG.

16 Q. Ryan Evans?

17 A. I don't know that I knew he was at KPMG, no.

18 Q. Scott Furman?

19 A. Yes.

20 Q. Sheldon Kelly?

21 A. Yes.

22 Q. Joe Lynch?

23 A. Yes.

24 Q. Scott Henderson?

25 A. Yes.

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Rodriguez - redirect

1 Q. Evan Benson?

2 A. I don't have a memory of Evan Benson.

3 Q. Thank you. And, finally, just going back to the 45-day
4 notification, when, again, when that mistake or the
5 misscheduling happened, where you notified KPMG within the
6 45-day period --

7 A. Yes.

8 Q. -- did you, or anybody at the PCAOB, notify the SEC of that
9 delayed notification mistake?

10 A. I don't know.

11 MR. OHTA: No further questions, your Honor.

12 THE COURT: OK. Thank you.

13 Any redirect?

14 MS. MERMELSTEIN: Very briefly, your Honor.

15 THE COURT: Yes.

16 REDIRECT EXAMINATION

17 BY MS. MERMELSTEIN:

18 Q. I'll be fast.

19 With respect to the inspection notifications that
20 contained geographic information, were you authorized to send
21 those notifications?

22 In other words, you did that as part of your regular
23 job description --

24 A. Yes.

25 Q. -- on the KPMG team, right?

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Rodriguez - redirect

1 A. Yes.

2 Q. And if those inadvertently suggested who might be
3 inspected, that was just a mistake, right?

4 A. Yes.

5 MR. OHTA: Objection. Leading, your Honor.

6 MS. MERMELSTEIN: It is redirect, your Honor, and I am
7 trying to plow through it.

8 THE COURT: I will allow it. It is fine.

9 BY MS. MERMELSTEIN:

10 Q. How long generally were particular inspections noticed for?
11 How much advance notice was for a particular inspection?

12 A. Generally, commonly three to four weeks, sometimes two.

13 Q. In cases where it went longer because, for example, it got
14 rescheduled, the PCAOB knew that that particular engagement
15 team had had more time to prepare for the inspection, right?

16 A. Yes, we did.

17 Q. With respect to the 2016 replacement inspections and the
18 issuance of the 2017 report, how were the 2016 replacement
19 inspections chosen?

20 A. The 2016 replacement inspections were chosen based on who
21 we chose for 2017. So we went through a planning process for
22 2017 and repicked our issuers, and then we did those same
23 issuers, banking issuers, for 2016.

24 Q. So through the regular process for 2017 and then you also
25 moved to 2016?

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Rodriguez - redirect

1 A. Yes.

2 Q. And is the -- withdrawn.

3 In general, are inspection reports issued to the
4 public when they are complete and ready to go?

5 A. Yes. To my knowledge, yes.

6 Q. From your perspective, anything different about the release
7 of the 2016 and 2017 KPMG reports?

8 A. Not that I'm aware of.

9 Q. With respect to the disagreement rate issues, so the extent
10 to which KPMG would disagree with either a portion of a comment
11 or the whole comment, how frequently did that result in a
12 comment not issuing at all?

13 A. To my memory, not often.

14 Q. With respect to Brian Sweet's presence on inspections once
15 he was at KPMG, was that only after his year of recusal had
16 expired?

17 A. Yes. If you leave the PCAOB to go to a firm, there is a
18 one-year cooling off period whereby you cannot interact with
19 the PCAOB or those inspections for that year.

20 Q. Ms. Lester asked you a number of questions about the
21 content of the GNF planning spreadsheet, and elicited I think
22 that some of the information in there is otherwise available,
23 for example, it draws from public information. Does that in
24 any fashion render the PCAOB's analysis and selection process
25 any less confidential?

J2edmid7

Rodriguez - redirect

1 A. No.

2 Q. And to the extent that the PCAOB disclosed a particular
3 concern it had -- so, for example, the PCAOB said to everyone
4 we're worried about this audit standard and we're going to be
5 thinking about it -- that notice was given to every firm,
6 right?

7 A. Yes.

8 Q. And it could be considered by every engagement team working
9 on any engagement at the firm, right?

10 A. That's correct.

11 Q. There wasn't just special notice to a few engagements that
12 were going to be inspected, right?

13 A. That is correct.

14 Q. With respect to the purpose of an inspection generally, is
15 the purpose of an inspection to inspect the whole firm or just
16 the particular audits that are part of the inspection process?

17 A. We perform an inspection of the U.S. firm, KPMG U.S. It is
18 of the whole firm.

19 Q. So let's look at Government Exhibit 1, page 2, very
20 quickly.

21 So let me read to you the first sentence of the
22 paragraph beginning, "The inspection."

23 "The inspection procedures included" -- I'm sorry, I
24 am looking at the wrong page. It is page 2 of the pdf. There
25 we go.

J2edmid7

Rodriguez - redirect

1 "Inspections are designed and performed to provide a
2 basis for assessing the degree of compliance by a firm with
3 applicable requirements related to auditing issuers."

4 And so does this indicate that the inspection report
5 is an inspection of particular engagements or of the firm as a
6 whole?

7 A. It's an inspection of the firm as a whole whereby there
8 were a few particular engagements, but the inspection is of the
9 firm as a whole.

10 Q. "The inspection included reviews of portions of selected
11 issuer audits. These reviews were intended to identify whether
12 deficiencies existed in the reviewed work, and whether such
13 deficiencies indicated defects or potential defects in the
14 firm's system of quality control over audits."

15 What does that mean with respect to the purpose of the
16 inspection?

17 A. So we review the issuers that we select, and those issuers
18 provide us information as to whether there are larger quality
19 control concerns evident in the firm, as evidenced by what we
20 see in this issue inspection. They give us indications of
21 problems that could exist on a larger scale in the firm.

22 Q. Let me turn your attention very briefly to the internal
23 inspections that took place at KPMG and to their monitoring
24 programs.

25 A. OK.

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Rodriguez - redirect

1 Q. Do you understand those to be two different things?

2 A. Yes, they are.

3 Q. With respect to the internal inspections, were you aware
4 that those were conducted for every partner once every three
5 years?

6 A. Yes.

7 Q. So not sort of a risk-based issue?

8 In other words, they didn't look at the riskiest
9 partners more, they looked at everybody on a schedule?

10 A. I believe it is a minimum of every three years. They could
11 look a partner more if there are issues, but every three years
12 you looked at every partner.

13 Q. Understood. With respect to the monitoring programs, those
14 put extra resources to audits that had particular issues that
15 were complicated, right?

16 A. Yes.

17 Q. Are you familiar with the term "Preissuance Program"?

18 A. Yes.

19 Q. What does that mean about when the program was in place?

20 A. That would indicate that the reviews were taking place
21 prior to the issuance of the financial statements and opinion.

22 Q. In other words, the additional attention that was being
23 given to those was being done before the audit opinion issued?

24 A. Correct.

25 Q. And were those monitoring programs designed to improve

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Rodriguez - redirect

1 audit quality with respect to just engagements that were going
2 to be inspected by the PCAOB or to engagements that had that
3 particular issue more generally?

4 A. More generally that had that issue.

5 Q. I want to talk for just a minute about documentation.

6 So, you've been asked a fair amount about the notion
7 that the PCAOB doesn't issue comments just based on a lack of
8 documentation. Ms. Lester I think gave you an example of
9 someone who says, well, I did make the phone call, I just
10 didn't write it down.

11 If someone on the engagement team says they performed
12 procedures but there is no evidence that they did it, does the
13 PCAOB just accept sort of their statement that they did it?

14 A. No. Oral evidence alone is not sufficient to indicate an
15 audit procedure has been performed. We look for other
16 persuasive evidence to support the statement that it occurred.

17 Q. Now, to give a different example, if, for example, I'm an
18 auditor on an engagement team and I did work in a workpaper. I
19 saved it on my computer and I forgot to upload it to the audit
20 system. And you said, You didn't do this work, and I said, No,
21 I can prove I had it, would you issue a comment in that
22 situation?

23 A. That issue alone, that is what we mean by "other persuasive
24 evidence," and we would consider the existence of that other
25 evidence.

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Rodriguez - redirect

1 Q. So the fact that it wasn't in the audit file doesn't cause
2 a comment based just on the documentation in that it wasn't in
3 the right place?

4 A. That's correct.

5 Q. When we talk about audit workpapers, I think perhaps we
6 think a lot about certain numbers, but workpapers also include
7 a lot of narrative judgments, right?

8 A. Yes.

9 Q. And so let's look for a moment at Defense Exhibit 245,
10 M245, the inspections manual.

11 And can we go to page 1 of the document itself based
12 on the pages at the bottom of the document.

13 I'm sorry. I think I have the wrong page.

14 (Pause)

15 With respect to evaluating whether or not an
16 engagement team has properly exercised its judgment, is the
17 description of how it analyzed an issue relevant to the
18 consideration of whether or not the audit work was properly
19 considered -- performed?

20 A. Can you clarify that question more?

21 Q. To the extent that the audit work at issue is an evaluation
22 of whether or not, for example, an engagement -- an issuer had
23 adequate controls, your assessment of whether or not the audit
24 work is sufficient is based on the documents you review, right?

25 A. Yes.

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Rodriguez - redirect

1 Q. And so the nature of the quality of the documentation
2 matters in assessing whether or not the audit work was
3 sufficient?

4 A. Yes, because it allows us to understand what was actually
5 done to test it.

6 Q. OK. So we've gotten to the right page here.

7 And so, for example -- can we pull this up
8 side-by-side with the prior page, please, Mr. Cooney.

9 (Pause)

10 OK. So we've got the pages. We'll just leave them.

11 Here in 500.3 they are talking about the inspection
12 opening meeting, and it describes the purpose of the meeting to
13 include, among other things -- now I'm looking at the top of
14 the next page -- an evaluation of the critical thinking and
15 professional judgments employed to determine significant
16 accounts and disclosures and relevant assertions.

17 Do you see that?

18 A. Yes, I do.

19 Q. And if we then go to the next page, to page 3, let me
20 direct your attention to the section beginning, "In general,
21 the more judgment that is required in an area, the greater the
22 need for the engagement team to support and document that
23 judgment."

24 And then it goes on to talk about the kinds of
25 analysis that's necessary to evaluate the team's judgment.

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Rodriguez - redirect

1 Fair to say that the quality of the documentation
2 matters?

3 A. Yes.

4 Q. Last set of questions.

5 You were asked a fair amount about individuals who
6 left the PCAOB and went to work at audit firms, including at
7 KPMG. And there is nothing wrong with someone sort of moving
8 from one entity to another, right?

9 A. No, there is not.

10 Q. No one at the PCAOB was aware, though, until this broke,
11 that anyone had taken confidential information with them,
12 right?

13 MR. OHTA: Objection, your Honor. Speculation.

14 THE COURT: Sustained.

15 BY MS. MERMELSTEIN:

16 Q. It would not be proper, however, for an employee of PCAOB
17 to leave and take with them confidential PCAOB information,
18 right?

19 A. That would not be --

20 MR. OHTA: Objection, your Honor.

21 THE COURT: It would not be proper for an employee?

22 MS. MERMELSTEIN: I will rephrase.

23 Q. Would that be a violation of the PCAOB ethics code?

24 A. Yes.

25 MS. MERMELSTEIN: Nothing further.

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1 THE COURT: OK. Anything further?

2 MS. LESTER: No, your Honor.

3 MR. OHTA: No, your Honor.

4 (Witness excused)

5 THE COURT: All right, folks. It's just before
6 5 o'clock and you are done for the week. Thank you for your
7 patience and attentiveness during this first week. You are
8 going to be off tomorrow and also off Monday for President's
9 Day. The courthouse is closed.

10 So, we'll resume Tuesday morning at 9:30. We'll have
11 coffee at 9. Shoot for 9/9:15, if you can. We will try to
12 start as promptly as we can at 9:30.

13 I just want to remind you, since we are going into a
14 four-day weekend, you will be leaving your notepads here. You
15 should not discuss the case. Don't look into anything about
16 the case. You should basically forget about the case for the
17 next four days. And when you come back we'll continue with the
18 testimony. So, you are not discussing the case with each other
19 or with anyone else other than to say you are on jury duty.

20 And I hope you have a good weekend, and we will see
21 you Tuesday morning and we will be in at 9:30. Have a good
22 weekend.

23 (Continued on next page)

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1 (Jury not present)

2 THE COURT: You may be seated.

3 Anything anybody wanted to discuss?

4 MS. MERMELSTEIN: Not from the government, your Honor.

5 MR. BOXER: No, your Honor.

6 MR. OHTA: I have just one thing. It's a copy of the
7 E&Y spreadsheet. The witness said she reviewed an E&Y
8 spreadsheet that the government said it didn't have, so we
9 would like to request -- we would like to request that in
10 discovery.

11 THE COURT: OK. So, what is the status -- is one --
12 were there disks submitted, or what?

13 MS. MERMELSTEIN: Yes. So this is how this played
14 out. We obtained a copy of all of the documents that were
15 saved in that particular file folder on Mr. Wada's PCAOB
16 computer with the exception of the E&Y document, which did not
17 seem pertinent to this case and which contains confidential
18 information belonging -- I understand, I haven't seen it --
19 both to E&Y and to PCAOB. We understood that the defendants
20 intended to argue that that was not improperly being viewed by
21 Mr. Wada, that it was an effort by him to show consistency
22 across his firm and other firms, which is why more than one
23 firm, not just KPMG but also E&Y.

24 In order to make sure that sort of that fairly got in
25 front of the jury, we asked Ms. Rodriguez if she was familiar

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1 with that particular document. And then, in order to make sure
2 that she was correct, her counsel showed her that document on
3 counsel's computer. It was physically in the U.S. Attorney's
4 Office, but it was not ever on our computer, it was on
5 counsel's computer, and we didn't ever get a copy of that
6 document. And that is sort of how we ended up here.

7 If defense counsel wants to subpoena that document
8 from the PCAOB, they certainly can. I don't know sort of the
9 extent to which they feel that is necessary. I think her
10 testimony came in confused about sort of who exactly showed it
11 to her. We have never possessed it.

12 THE COURT: And you still don't?

13 MS. MERMELSTEIN: And we still don't.

14 And so I think we are in the same place that we were
15 at the sidebar, which is if defense counsel feels it is
16 important to their case, they should take whatever steps are
17 appropriate to get it.

18 I don't think that we should be saying in front of the
19 jury to a witness, well, I'm going to ask for that document. I
20 think if defense counsel want to subpoena or otherwise request
21 documents, that should be done with lawyers and not put to
22 particular witnesses

23 MR. OHTA: Your Honor, based on that explanation, I
24 think the testimony should be stricken. I have never been
25 given an opportunity to review that document because the

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1 government said they didn't have it so I couldn't do my own
2 analysis on it, and now it is a document that was shown on
3 PCAOB counsel's computer.

4 THE COURT: She didn't testify to anything about the
5 document except that she saw it, so --

6 MR. OHTA: From counsel's computer. And I believe the
7 jury is -- well, I'm positive the jury is going to infer that,
8 based on the witness' testimony, that that document came from
9 Mr. Wada's computer, which I don't know if that's accurate
10 because she saw it on her counsel's computer.

11 THE COURT: But it was on his computer, right?

12 MR. OHTA: I'm assuming it was, your Honor.

13 THE COURT: So what's the confusion? I'm not seeing
14 the issue.

15 MR. OHTA: Your Honor, not only did she say that she
16 saw the document on the computer, but there is testimony in the
17 record talking about the contents of the document. Nothing
18 that I could cross-examine her on because I have never seen the
19 document.

20 THE COURT: So you don't know if you want the document
21 in or not?

22 MR. OHTA: I want the opportunity to review the
23 document, your Honor.

24 THE COURT: Well, I think the only way to do that is
25 to get it from PCAOB. Why don't you subpoena the document from

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1 PCAOB?

2 MR. OHTA: We'll probably be sending you a letter
3 shortly, a request shortly, your Honor.4 THE COURT: OK. Tell them that I intend to approve a
5 subpoena for that document.

6 MR. OHTA: I appreciate it.

7 THE COURT: And it will be treated as confidential. I
8 may -- if there is some dispute about it, I will look at it in
9 camera.

10 MR. OHTA: Thank you, your Honor.

11 THE COURT: I think it makes sense, given that there
12 was testimony about it, that at least you should see it.

13 MR. OHTA: Thank you, your Honor.

14 THE COURT: Anything else you want to talk about?

15 MR. BOXER: No, your Honor.

16 MS. MERMELSTEIN: No, your Honor.

17 THE COURT: OK. We'll see you, say, 9:15 on Tuesday.

18 MS. MERMELSTEIN: Thank you, your Honor.

19 THE COURT: Thank you. Have a good weekend.

20 MS. MERMELSTEIN: You, too.

21 (Adjourned to 9:15 a.m. February 19, 2019)

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23

24

25

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2	Examination of:	Page
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5	Cross By Ms. Lester	507
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1 GOVERNMENT EXHIBITS

2	Exhibit No.	Received
3	20	443
4	102	445
5	2, 4, and 6	472
6	1357	485
7	1351 to 1356	494
8	1359	503
9	1358	505

10 DEFENDANT EXHIBITS

11	Exhibit No.	Received
12	M263	514
13	M245	531
14	M-264	557
15	M-266	561
16	M-267	568
17	M-268	572
18	M-269	574
19	M-270	577
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21	1535	656